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# QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

## Decisions adopted by the Working Group on Arbitrary Detention

The present document contains the decisions adopted by the Working Group on Arbitrary Detention at its fourteenth session, held in November/December 1995, at its fifteenth session, held in May 1996 and at its sixteenth session, held in September 1996, as well as three revised decisions adopted by the Working Group at its fifteenth session. The statistical data concerning decisions Nos. 35/1995 to 49/1995 are included in the report submitted by the Working Group to the Commission on Human Rights at its fifty-second session (E/CN.4/1996/40, annex II). The statistical data concerning decisions adopted during 1996 are included in the report of the Working Group to the Commission on Human Rights at its fifty-third session (E/CN.4/1997/4, annex II).

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DECISION No. 35/1995 (BAHRAIN)

Communication addressed to the Government of Bahrain on 3 March 1995.

Concerning: 532 persons (whose names are reproduced in the attached list), on the one hand and the State of Bahrain, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. With a view to taking a decision the Working Group considers if the cases in question fall into one or more of the following three categories:

I. Cases in which the deprivation of freedom is arbitrary, as it manifestly cannot be linked to any legal basis (such as continued detention beyond the execution of the sentence or despite an amnesty act, etc.); or

II. Cases of deprivation of freedom when the facts giving rise to the prosecution or conviction concern the exercise of the rights and freedoms protected by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights; or

III. Cases in which non-observance of all or part of the international provisions relating to the right to a fair trial is such that it confers on the deprivation of freedom, of whatever kind, an arbitrary character.

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of Bahrain. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. According to the communication received from the source, a summary of which was transmitted to the Government, over 2,000 people have been detained, since 5 December 1994, under the provisions of the State Security Law of 22 October 1974, which reportedly entitles the Minister of the Interior to detain political suspects for up to three years without a trial. It was further alleged that the aforementioned State Security Law had not been approved by the National Assembly, as required by the Constitution, and that,

as a result, the very legality of that law was in question. According to the source, the Government of Bahrain itself stated before the forty-ninth session of the Commission on Human Rights, in 1993, that it would stop resorting to that law; but despite that commitment, scores of persons were being detained by virtue of that law. It was further reported that all the persons detained since 5 December 1994 were being held incommunicado and were being allegedly exposed to physical and psychological torture. The source quoted the name of an 18-year-old detainee, Hussain Qambar, who allegedly died under interrogation on 4 January 1995. According to the source, the recent wave of arrests followed the drafting, in November 1994, of a petition by 14 prominent figures, demanding the restoration of the 1973 Constitution and the elected National Assembly which was dismissed by the Amir of the State of Bahrain on 25 August 1975. The petition was reportedly signed by thousands of persons from all sections of the community. The source provided the Working Group with a list of 532 persons detained in the recent wave of arrests during pro-democracy demonstrations or during violent incidents which occurred in recent months. The source noted, however, that 17 out of the 532 detainees had been released and that 2 others had been expelled to Dubai.

6. It appears from the list of 532 detainees which was addressed by the source to the Working Group and transmitted by the Group to the Government, that out of the 532 persons concerned, 70 had been arrested "during the funeral of Al Fatlawi" or at the cemetery, and that some 30 persons were arrested during rioting.

7. In its reply dated 15 May 1995, the Government of the State of Bahrain indicated that all the arrests referred to in the communication were motivated by acts of violence such as participation in rioting, sabotage, arson, assassination, etc. It further indicated that a certain number of detainees - without giving their names or their exact number - had in the meantime been remanded in custody by the courts and that many others had been released.

8. It appears from the Government's reply that, except for those persons remanded or released, all the others remain under detention without charge or trial. The Government recognizes that persons suspected of having committed "political offences" have been detained without trial for over three years, indicating that in such cases their situation is reviewed every six months and that such a duration of remand requires the existence of sufficient evidence against the detainee.

9. The Government firmly rejected the allegation by the source that the State Security Law was unconstitutional. It stated that if there was no such law, the Bahraini authorities would not be able to efficiently combat terrorism. The Government, while referring to the 1976 Criminal Procedure Code, some provisions of which were allegedly violated by those detained by committing serious common-law crimes, failed to indicate whether in the case of those detainees the authorities applied the State Security Law or the Criminal Procedure Code.

10. Moreover, the Government did not provide any explanation regarding the attached list of 532 detainees. It failed to explain whether the arrests had been carried out during the funeral of Al Fatlawi, or at the mosque or in the

hospital during treatment, as alleged by the source. No detail was given as to the identity of those who were released and whether they were the same persons reported by the source to be released.

11. In its detailed observations of 18 August 1995 the source, while commenting on the national legislation, the alleged human rights violations, the political trials and the general situation in the country, failed to provide the Working Group with any updated information regarding the 513 persons who were on the list submitted by the source and are presumably still under detention.

12. The source nevertheless provided the Working Group with its views regarding the State Security Law, as follows: "Article 1 of the Decree Law on State Security Measures of 22 October 1974 permits administrative detention by order of the Minister of the Interior: If there is serious evidence that a person has made statements, committed acts, undertaken activities or made contacts which are damaging to the internal or external security of the country, or to the country's religious or national interests, or to its fundamental structure, or social or economic systems, or amount to discord, which affects, or could affect, relations between the people and the government, or between the various institutions of the state, between sectors of the people, those working in establishments and companies, or which aim to assist in the commission of acts of sabotage or harmful propaganda, or the dissemination of heretical principles."

13. According to the source the law provides neither additional clarification of what may constitute "serious evidence" nor further definition of the acts described in article 1. The broad phrasing of the law has permitted the long-term detention of individuals for the non-violent exercise of their human rights.

14. The source further states that the same article provides that "anyone arrested in accordance with this law may submit a petition to the Supreme Court of Appeal to challenge the detention order three months after the date of its issue, and thereafter, six months after every decision rejecting the petition, up to a maximum period of three years. There appears to be no requirement that detainees be informed of their right to challenge their detention. In practice, this law allows indefinite incommunicado detention." The source knows of cases of political detainees who were apparently held under these provisions, without charge or trial, for as long as three to seven years (such as Sheikh Mohammad Ali al-Ikri, Abd al-Karim Hassan al-Aradi and Abd al-Nabi al-Khayami). The 1974 State Security Measures also introduced an amendment, article 8 of which amends article 79 of the 1966 Criminal Procedure Code by adding a new paragraph 3 as follows: "For crimes harmful to the internal or external security of the state, defined in the penal code, detention for an indefinite period shall be authorized." Petitions may be made to challenge the legality of the detention one month after the authorization was given, and, if rejected, on a monthly basis thereafter. The source is not aware of any political cases in which this monthly appeal has taken place.

15. The Working Group notes that the State Security Law does not make any distinction, in its provisions, between persons who, on the one hand, are prosecuted for having engaged in peaceful activities or activities undertaken in the exercise of their fundamental rights to freedom of religion, freedom of opinion and expression, freedom of assembly and association and freedom to take part in the government of one's country - rights guaranteed by articles 18, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 18, 19, 21, 22 and 25 of the International Covenant on Civil and Political Rights; and on the other hand persons who are prosecuted for having committed acts which constitute undue abuse of the exercise of the aforementioned rights.

16. The information provided by the source and the Government's reply do not enable the Working Group to verify the number and the identity of the persons, among those on the list addressed to the Working Group, who are under detention as suspects of having engaged in violent acts (and the source does not deny their existence); especially since the provisions of the State Security Law appear, in the Working Group's view, to be concerned with non-violent acts.

17. The Working Group believes on the other hand that, irrespective of the application of the State Security Law for prosecuting acts of undue abuse of the aforementioned fundamental freedoms, that law, in conjunction with the provision of the Criminal Procedure Code mentioned in paragraph 14 above, is liable to cause grave violations of the right to a fair trial, guaranteed by article 9 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights. The application of the State Security Law is also in contravention of principles 10, 11, 12, 13, 15, 16, 17, 18, 19 and in particular principle 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

18. In its report to the fifty-first session of the Commission on Human Rights (E/CN.4/1995/31, para. 51) the Working Group reiterated "its concern at the imprecision with which legislation in many countries describes the conduct charged. The examples given in earlier reports were again noted in the year covered by this report (acts described by the Governments concerned as 'treason', 'acts hostile to a foreign State', 'enemy propaganda', 'terrorism', etc.)."

19. It appears from the facts as described above that, out of the 532 persons figuring on the list of persons detained since 5 December 1994, 2 were expelled to Dubai, 17 were released and the other 513 remain under detention without charge or trial, with the exception of a few persons whose number and identity are unknown to the Group, who, according to the Government, have been remanded in custody. Failure to charge or try such detained persons constitutes a violation of the rights guaranteed by articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, as well as by principles 11, 12 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The non-observance of these rights and principles which relate to the right to a fair trial is such that it confers on the detention an arbitrary character.

20. In the light of the above the Working Group decides:

(a) The detention of the 513 persons still detained who figure on the list submitted to the Working Group, is declared to be arbitrary being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) To file the cases of the 17 persons who were released and of the 2 persons who were expelled.

(c) To transmit the information regarding the alleged cases of torture to the Special Rapporteur on torture.

21. Consequent upon the decision of the Working Group declaring the detention of the 513 detained persons to be arbitrary, the Working Group requests the Government of the State of Bahrain to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 24 November 1995.

DECISION No. 36/1995 (MALDIVES)

Communication addressed to the Government of Maldives on 7 February 1995.

Concerning: Mohamed Nasheed and Mohamed Shafeeq, on the one hand and the Republic of Maldives on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Maldives. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the communication submitted by the source, a summary of which was forwarded to the Government, Mohamed Nasheed, founder and deputy editor of "Sangu" magazine, was arrested on 30 November 1994 upon his return from Nepal, where he attended a meeting by journalists. The co-founder and publishing manager of the same magazine, Mohamed Shafeeq, was arrested the same evening. Both were reportedly detained in a prison in the island of Dhoonidhoo, as were several other opposition figures which the Government allegedly wished to silence in view of the parliamentary elections which were due to be held on 2 December 1994. Mr. Shafeeq had already been arrested in 1990, the year in which he founded "Sangu", accused of attempting to carry out an attack during a regional conference held in Maldives, and sentenced in December 1991 to 11 years' imprisonment. Mr. Nasheed, who had also been arrested in 1990, had been held incommunicado for 18 months before being sentenced in April 1992 to 3 years' imprisonment for having concealed information about the attempted attack for which Mr. Shafeeq was convicted. The two journalists were released in 1993 after being held for three years, allegedly in inhuman conditions.

6. Subsequent to the aforementioned communication, the Working Group was informed by another source that Mohamed Shafeeq had been first placed under house arrest, and that that measure was lifted on 27 August 1995. The same

source also reported that a person named Ahmed Shafeeq (whose case does not correspond to that of the second person concerned by the present communication, Mohamed Nasheed), had been placed under house arrest.

7. It follows from the facts as described above which, it may be recalled, have not been challenged by the Government despite the possibility given to it to do so, that the detention of Mohamed Shafeeq, even though it took the form of a house arrest, and that of Mohamed Nasheed, was solely motivated by the will to suppress their critical voices - as journalists strongly devoted to the freedom of press and members of the opposition - on the eve of parliamentary elections which were to decide the future of the country. Their detention was therefore arbitrary since they merely exercised their right to freedom of opinion and expression, guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

8. In the light of the above the Working Group decides:

> Notwithstanding the release of Mohamed Shafeeq, his detention, as well as the detention of Mohamed Nasheed, is declared to be arbitrary being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

9. Having declared the detention of Mohamed Nasheed and Mohamed Shafeeq to be arbitrary, the Working Group requests the Government of the Republic of Maldives to take the necessary measures to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 24 November 1995.

DECISION No. 37/1995 (DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA)

Communication addressed to the Government of the Democratic People's Republic of Korea on 7 February 1995.

Concerning: Kang Jung Sok and Ko Sang Mun, on the one hand and the Democratic People's Republic of Korea, on the other.

1. It may be recalled with regard to the above-mentioned communication, to which the Government had replied, that the Working Group, by its decision No. 29/1995 decided to keep the cases of the aforementioned persons pending while awaiting further information. That decision was motivated by the fact that the Working Group had before it two contradictory versions: That of the source, according to which Kang Jung Sok and Ko Sang Mun had been detained in 1990 at the Sungho Detention Centre, and that of the Government, according to which these two persons were not currently detained. The Government, which indicated the present address of one of the two persons concerned, Kang Jung Sok, did not indicate whether or not they had been detained in the past.

2. The Government of the Democratic People's Republic of Korea provided the Working Group with further information on 6 November 1995, stating that the two persons concerned had never been detained and also indicating the present address of the second person, Ko Sang Mun. The source, for its part, did not react.

3. In the light of the further information provided by the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the version of facts as described by the Government has not been challenged or refuted by the source.

4. In the light of the above the Working Group, noting the fact that, in the present state of the information available to it, the two persons concerned had never been detained, decides to file their cases.

Adopted on 24 November 1995.

DECISION No. 38/1995 (BAHRAIN)

Communication addressed to the Government of Bahrain on 14 August 1995.

Concerning: Sheikh Abdul Amir al-Jamri and Malika Singais, on the one hand and the State of Bahrain, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. The Working Group further notes that the Government concerned has informed the Group (which fact has been confirmed by the source) that the above-mentioned persons are no longer in detention.

4. Having examined the available information, and without prejudging the nature of the detention, the Working Group decides to file the cases of Sheikh Abdul Amir al-Jamri and Malika Singais in terms of paragraph 14 (a) of its methods of work.

Adopted on 24 November 1995.

DECISION No. 39/1995 (ETHIOPIA)

Communication addressed to the Government of Ethiopia on 7 February 1995.

Concerning: Daniel Kifle, on the one hand and Ethiopia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. The Working Group further notes that the source which had submitted the information to the Working Group has informed the Group that the above-mentioned person is no longer in detention.

4. Having examined the available information and without prejudging the nature of the detention, the Working Group decides to file the case of Daniel Kifle in terms of paragraph 14 (a) of its methods of work.

Adopted on 30 November 1995.

DECISION No. 40/1995 (TURKEY)

Communication addressed to the Government of Turkey on 7 February 1995.

Concerning: Leyla Zana, Hatip Dicle, Ahmet Turk, Orhan Degan, Selim Sadak and Sedat Yurttas, on the one hand and the Republic of Turkey, on the other.

1. It may be recalled with regard to the above-mentioned communication, to which the Government had not replied, that the Working Group, by its decision No. 33/1995 decided to keep the cases of the aforementioned persons pending until the source indicated to it how, as alleged by the source, the trial of those persons was conducted in conditions which violated the accepted international norms regarding fair trial, and in particular those concerning the rights of the defence and the principle of the independence of the judiciary.

2. The source provided the Working Group further information as follows:

(a) As regards the rights of the defence. The lawyers of the defendants received power of attorney allegedly only at the end of the inquiry. They were therefore unable to follow the preliminary investigation and to examine the files prior to the trial. Moreover, the principle of adversarial proceedings was allegedly not observed at the trial before the State Security Court: Thus, the defence was unable to challenge the evidence presented by the prosecution, nor was it authorized to produce evidence in favour of the defendants or to examine witnesses,

(b) As regards the principle of the independence of the judiciary. The State Security Court allegedly does not offer sufficient guarantees of independence or, even more, of impartiality, for the following reasons:

- its members are appointed by a restricted committee presided by the Minister of Justice or his Counsellor;

- although under the Court's statutes judges have a mandate of four years, one of the judges, who is a member of the armed forces, has been serving on the bench since 1987;

- the judicial inquiry is carried out by the Public Prosecutor's Office and by the Police, and not by an independent judge.

The source alleges that the above-mentioned elements show that the State Security Court depends on the Executive and that it administers justice in a partial manner, in accordance with the Government's interests.

3. The Working Group considers that the shortcomings indicated by the source, which are related to the right to a fair trial, constitute a violation of articles 10 and 11 of the Universal Declaration of Human Rights, and of article 14 (1) and (2) of the International Covenant on Civil and Political Rights which is evidently of such gravity that it confers on the deprivation of freedom an arbitrary character.

4. In the light of the above the Working Group decides:

The detention of Leyla Zana, Hatip Dicle, Ahmet Turk, Orhan Degan, Selim Sadak and Sedat Yurttas is declared to be arbitrary being in contravention of articles 10 and 11 of the Universal Declaration of Human Rights, and of article 14 (1) and (2) of the International Covenant on Civil and Political Rights and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

5. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of Turkey to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 November 1995.

DECISION No. 41/1995 (COLOMBIA)

Communication addressed to the Government of Colombia on 7 February 1995.

Concerning: Oscar Eliecer Paña Navarro, Jhony Albert Meriño and Eduardo Campo Carvajal, on the one hand, and Colombia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Colombia. The Working Group transmitted the reply provided by the Government to the source but, to date, the latter has not provided the Working Group with its comments. In the context of the information available to it, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases.

5. The Working Group considers that:

(a) According to the communication, Oscar Eliecer Peña Navarro, Jhony Albert Meriño and Eduardo Campo Carvajal were arrested at their home on 21 April 1993 by members of the SIJIN (National Police), being accused of the murder of journalist Carlos Alfonso Lajud Catalán two days earlier, and as of that date were deprived of liberty by order of the Barranquilla Regional Prosecutor. The grounds on which it is contended that the detention should be considered arbitrary are as follows: (1) the persons concerned were taken into custody without an arrest warrant having been issued beforehand by a court; (2) the search during which they were taken into custody was also conducted without a valid judicial warrant; (3) the persons concerned were held incommunicado for a period of 21 days; (4) the evidence produced to incriminate them is insufficient, since the young persons were not at the scene of the crime on the day it was committed, one witness did not identify them as participants and the search of the dwelling where they were arrested did not uncover physical evidence of the offence.

(b) In its documented reply, the Government reports that the detainees were apprehended under a warrant originating from the Barranquilla Regional Prosecutor's Office, issued in conformity with the law on 21 April 1993, from which an appeal was entered by the detainees; it goes on to state that the search warrant was also provided by the same judicial officer, and under Colombian law does not require prior notice when that may interfere with the conduct of the procedure in question; that the security measure involving

an arrest warrant was taken in view of the circumstantial evidence of responsibility; and that these decisions were challenged in the course of an appeal by the accused and were upheld by the National Court.

(c) It has been attested that both the search of the house in which the above-mentioned persons were found and the detention itself were carried out under warrant from the Barranquilla Regional Prosecutor, whereby the Prosecutor - in the first instance - and the National Tribunal - in the second - found evidence of guilt.

(d) The mere holding of persons incommunicado for 21 days - a fact not challenged in the Government's reply - is not of such gravity in itself as to confer on the detention an arbitrary character, given the seriousness of the offence being investigated, within the terms of principles 15, 16 (4) and 18 (3) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, since it is a measure ordinarily employed in legal systems to protect judicial inquiries.

(e) The only grounds on which cases of detention may be considered to be arbitrary are those described in the three categories to which reference has been made. An evaluation of evidence of guilt is not part of the mandate of the Working Group, as it has had occasion to state in numerous decisions, and cannot be included in any of the three above-mentioned categories of arbitrary detention.

(f) The alleged grounds do not, therefore, fall within any of the categories cited.

6. In the light of the above the Working Group decides:

The detention of Oscar Eliecer Peña Navarro, Jhony Albert Meriño and Eduardo Campo Carvajal is declared not to be arbitrary.

Adopted on 30 November 1995.

DECISION No. 42/1995 (PERU)

Communication addressed to the Government of Peru on 4 May 1994.

Concerning: Luis Rolo Huamán Morales, Pablo Abraham Huamán Morales, Julián Oscar Huamán Morales and Mayela Alicia Huamán Morales, on the one hand, and the Republic of Peru, on the other.

1. With reference to the above-mentioned communication, in respect of which the Government of Peru did not forward a reply within 90 days, the Working Group in its decision No. 41/1994 decided to keep the above-mentioned cases pending until it received further information.

2. The Government of Peru has provided further information, which is incomplete since it relates to only two of the four persons whose cases are under consideration: the juvenile Luis Rolo Huamán Morales, who has been released, and Julián Oscar Huamán Morales, who is said not to have been held in detention.

3. The Working Group considers that:

(a) According to the source the four siblings were arrested on 15 October 1992 and brought before the 43rd Provincial Prosecutor's Office in Lima accused of terrorist offences which they claim not to have committed.

(b) The Government of Peru has not forwarded any information concerning detainees Pablo Abraham Huamán Morales and Mayela Alicia Huamán Morales, notwithstanding the expiry of the established deadline.

(c) The Working Group reiterates its position, already stated on numerous occasions in connection with communications from Peruvian non-governmental organizations, that it cannot decide on the quality of evidence produced in judicial proceedings and may only consider as arbitrary cases of detention falling within one or more of the three categories defined in its methods of work.

(d) Since Luis Rolo Huamán Morales has been released and Julián Oscar Huamán Morales is not in detention, the Working Group will file those cases.

(e) In order for the Working Group to decide whether the detention of Pablo Abraham and Mayela Alicia Huamán Morales may be described as arbitrary, further information is required, under the terms of paragraph 14.1 (c) of its methods of work, about the alleged contraventions of the rules relating to due process established in the international instruments.

4. In the light of the above the Working Group decides:

(a) To discontinue consideration of the situation of Luis Rolo and Julián Oscar Huamán Morales, the former having been released and the latter not having been held in detention.

(b) To keep the cases of Pablo Abraham Huamán Morales and Mayela Alicia Huamán Morales pending for further and more up-to-date information on the conditions of their judicial examination.

Adopted on 30 November 1995.

DECISION No. 43/1995 (PERU)

Communication addressed to the Government of Peru on 4 May 1994.

Concerning: Alfredo Raymundo Chaves, Saturnino Huañahue Saire, David Aparicio Claros, Meves Mallqui Rodríguez, María Salomé Hualipa Peralta and Carmen Soledad Espinoza Rojas, on the one hand, and the Republic of Peru, on the other.

1. With reference to the above-mentioned communication, in respect of which the Government of Peru did not forward a reply within 90 days, the Working Group in its decision No. 44/1994 decided to keep the above-mentioned cases pending until it received further information.

2. On 18 April and 31 August 1995, the Working Group received new and full information from the source. On 20 October 1995, the Government informed the Working Group that the persons concerned had been acquitted by the Special Court of the Peruvian Navy, in case 058-TP-93-Lima, and that the judgement was under review. In the light of the additional information, the Working Group is in a position to take a new decision.

3. The Working Group considers that:

(a) Alfredo Raymundo Chaves, Saturnino Huañahue Saire, David Aparicio Claros, Meves Mallqui Rodríguez, María Salomé Hualipa Peralta and Carmen Soledad Espinoza Rojas were detained between July and September 1993 after the murder, on 29 June 1993, of local leader Américo Padilla.

(b) Judicial proceedings concerning the offence of high treason were initiated in August 1993 before the military courts, as a result of which a judgement acquitting all the detainees was rendered by the Special Military Judge and upheld by the Navy Council.

(c) Following the third examination provided for by law, the Supreme Council of Military Justice annulled all the decisions taken and referred the case back to the court of first instance.

(d) In the new trial, by a decision of 14 March 1995, Carmen Soledad Espinoza Rojas, María Haulipa Peralta, Meves Mallqui Rodríguez and David Aparicio Claros were again acquitted and a decision taken in favour of their immediate release, which is subject to confirmation in second instance by the Navy Council and then, in third instance, by the Supreme Council of Military Justice. Alfredo Raymundo Chaves and Saturnino Huañahue Saire were also acquitted on the charge of high treason, but their trial in an ordinary court was ordered in view of evidence of their involvement in the offence of terrorism.

(e) The new trial of Alfredo Raymundo Chaves and Saturnino Huañahue Saire has still not begun, since confirmation of the first-instance judgement of 14 March is awaited.

(f) There has also been no review by the Navy Council and by the Supreme Council of Military Justice of the question of the unconditional release of Carmen Soledad Espinoza Rojas, María Haulipa Peralta and David Aparicio Claros.

(g) The Working Group notes that these facts are not contested by the Government of Peru, and indeed appear to be confirmed, except in regard to Meves Mallqui Rodríguez, who is said not to have been held in detention.

(h) The Code of Penal Procedure distinguishes between release on bail, which entitles the accused to his liberty - subject to monetary or personal surety - while proceedings are under way, and unconditional release, which is ordered when the non-culpability of the accused is fully demonstrated.

(i) Release on bail, for offences under ordinary law, involves a procedure that may not exceed six days, and if granted and appealed by another party to the proceeding, it is allowed immediately, without the outcome of the appeal being awaited. In proceedings before the military courts, the rules differ in respect of the grounds for release from custody.

(j) Unconditional release in proceedings relating to offences under ordinary law, and warranted because innocence is "fully" demonstrated, does not involve any procedure and is effected immediately without approval of the appeal court being awaited.

(k) The so-called "emergency legislation" modifies these precepts in various ways:

(i) Release on bail is not allowed in any case, not even when an acquittal is pending approval;

(ii) Unconditional release - also not provided for in the original text of emergency law 25,475 of 6 May 1992 - has again been accepted, following the amendment of law 26,248 of 24 November 1993, although with one very serious restriction: the decision granting unconditional release - where non-culpability is fully demonstrated - must be sent for review to the higher court, but "release from custody shall not be effected until the review has been completed".

(l) While it is reasonable that for the offences of terrorism and high treason the rules governing release on bail with security should be more strict, it is contrary to the International Covenant on Civil and Political Rights, as will be seen, for such provisions to be suppressed altogether.

(m) More serious is the continued detention of persons in custody for more than two years after deprivation of liberty, and for more than eight months after a decision in first instance calling for their unconditional release on the ground that "their non-culpability is fully demonstrated".

(n) Delay in effecting the release of individuals for more than eight months after a judge finds them innocent cannot be considered normal. On the contrary, the ordinary laws provide for release on bail to be granted after a very short procedure and for unconditional release to be ordered immediately. What the emergency law provides are dilatory procedures for granting freedom to persons of whose innocence the judge is fully convinced, without setting any deadline for completing a review of that decision.

(o) Preventive detention must not be the general rule and is provided for solely as a means of guaranteeing the accused's appearance for trial. Furthermore, principle 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that "a person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial". In addition, principle 39 states: "Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review".

(p) Almost two years have passed since the detention and eight months since the ordering of judicial proceedings against Alfredo Raymundo Chaves and Saturnino Huañahue Saire, and yet the trial ordered on 14 March 1995 has still not begun; furthermore, in respect of David Aparicio Claros, Meves Mallqui Rodríguez, María Salomé Hualipa Peralta and Carmen Soledad Espinoza Rojas, there is a judgement absolving them of all responsibility, which also dates from 14 March 1995 and has still not been confirmed.

(q) Under such circumstances, the deprivation of liberty of the persons referred to in the communication cannot but be described as arbitrary, considering that there has been a judicial decision in favour of four of them, calling for their release, and that a regular hearing in respect of the other two has not yet begun.

(r) This finding is confirmed by article 9 of the International Covenant on Civil and Political Rights, which provides that "it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement". In this instance, after more than 24 months of deprivation of liberty, an order for the unconditional release of four persons and an order to initiate formal proceedings for the others remain in abeyance.

(s) The provision of the Covenant that a person shall be brought without delay before a judge requires promptness not only at the initial moment of detention, but at all subsequent stages, especially if a judicial decision - albeit in first instance - has already established the detainee's innocence. In such cases there is even greater urgency, since the abstract presumption of innocence is coupled with the concrete presumption.

4. In the light of the above the Working Group decides:

(a) To file the case of Meves Mallqui Rodríguez, who is not, and has not been, held in detention.

(b) The detention of Alfredo Raymundo Chaves, Saturnino Huañahue Saire, David Aparicio Claros, María Salomé Hualipa Peralta and Carmen Soledad Espinoza Rojas is declared to be arbitrary, being in contravention of articles 3, 10 and 11 of the Universal Declaration of Human Rights, and of articles 9, 10, 11 and 14 of the International Covenant on Civil and Political Rights, to which the Republic of Peru is a party, and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

5. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of Peru to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 November 1995.

DECISION No. 44/1995 (PERU)

Communication addressed to the Government of Peru on 7 February 1995.

Concerning: María Elena Foronda Farro and Oscar Díaz Barboza, on the one hand, and the Republic of Peru, on the other.

1. With reference to the above-mentioned communication, in respect of which the Government of Peru did not forward a reply within 90 days, the Working Group in its decision No. 23/1995 decided to keep the above-mentioned cases pending until it received further information.

2. The Working Group notes that the source of the communication has informed the Group that the above-mentioned persons are no longer in detention.

3. Having examined the available information and without prejudging the nature of the detention, the Working Group decides to file the cases of María Elena Foronda Farro and Oscar Díaz Barboza under the terms of paragraph 14.1 (a) of its methods of work.

Adopted on 30 November 1995.

DECISION No. 45/1995 (EGYPT)

Communication addressed to the Government of Egypt on 14 August 1995.

Concerning: Hassan Gharabawi Shehata Farag, Abdel-Moniem Mohammed El-Srougi, Sha'ban Ali Ibrahim, Mansour Ahmad Ahmad Mansour, Mohammed Sayid L'eed Hassanien, Nabawi Ibrahim El-Sayid Farag, Ibrahim Ali el-Sayid Ibrahim, Ahmad Mohammed Abdullah Ali, Mohammed Abd El Rasiq Farghali, Mahmoud Mohammed Ahmad El Ghatrifi, Ramadan Abu El Hassan Hassan Mohammed and Ahmad Ahmad Mos'ad Soboh, on the one hand and the Arab Republic of Egypt, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect (of each of the cases) of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 30 of Decision No. 35/1995.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Egypt. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government although it was given the opportunity to do so.

5. According to the communication submitted by the source, a summary of which was forwarded to the Government:

(a) Hassan Gharabawi Shehata Farag, aged 34, was reportedly arrested on 11 January 1989 in connection with riots that took place in the Ain-Shams district of Cairo. On 29 May 1990 he was acquitted by a judicial ruling. However, on 1 June 1990, the authorities issued a detention order which was overturned by a final court ruling. According to the source, in spite of this judicial decision, the authorities issued a new detention order. It was reported that during the last few years Mr. Farag had received 25 release orders which the authorities have bypassed by transferring him from his place of detention to the Ain-Shams Police Station or to the office of the SSI at Shubra El-Khema for a few days, and then returning him under a new detention order. Mr. Farag had been held in the prisons of Al-Zagazig, Abou Za'abal, Istikbal Tora and the High Security Prison at Tora before being recently transferred to El-Wadi El-Gadeed Prison, where according to reports, he was ill-treated.

(b) Abdel-Moniem Mohammed El-Sourgi, aged 30, was arrested in June 1990 and since then has been held without a charge. It was reported that during his detention the authorities have managed to bypass the Court's rulings declaring the reason for his detention as invalid, and issued a total of eight new detention orders. According to the source, Mr. El-Srougi had been held in the prisons of Shebeen El-koum, Abou Za'abal, Istikbal Tora and the High Security Prison at Tora, before being recently transferred to El-Wadi El-Gadeed Prison where, according to the reports, he was ill-treated.

(c) Sha'ban Ali Ibrahim, aged 39, was reportedly arrested on 10 June 1991 and was still under detention even though he was acquitted by about 20 judicial rulings on the grounds that the reasons for his detention were invalid. According to the source, Sha'ban Ali Ibrahim was still being detained in spite of being acquitted by the investigating bodies in December 1994. He was recently transferred to El-Wadi El-Gadeed Prison. It was alleged that he had been subjected to torture in the SSI office at Lazoghli, where he was allegedly beaten on his legs and given electric shocks. He had also allegedly been attacked during the search campaign launched by the prison authorities at the High Security Prison at Tora on 19 October 1994, during which trained dogs, rubber batons, electric rods and tear gas were used.

(d) Mansour Ahmad Ahmad Mansour, aged 31, was reportedly arrested on 15 June 1992, as a suspect, during the campaign launched to pursue those accused of planning and carrying out the killing of secular writer Farag Fouda. On 30 December 1992 Mr. Mansour was acquitted by the court. Nevertheless, he had been subjected to recurrent detention even though he was again acquitted by court rulings on 23 February and 16 March 1994, on the grounds that the reasons for his detention were not sufficient. It was reported that during his detention he was transferred to various prisons including Istiqbal Tora, Leman Tora, the High Security Prison at Tora and Abu Za'abel Industrial prison. Mr. Mansour was currently being detained in El-Wadi El-Gadeed Prison. In March 1994, after he was transferred from Abu Za'abal prison to the High Security Prison at Tora, he was allegedly badly beaten, punched and kicked, as a result of which he suffered from a punctured ear drum, bleeding of the gums and bruises on different parts of his body.

(e) Mohammed Sayid I'eed Hassanien was reportedly arrested in early January 1994. A detention order was issued by the authorities on 14 February 1994. Since then he has reportedly been detained without charge or trial. According to the source, Mr. Hassanien was transferred from the Leman Tora Prison to the Mazra'it Tora Prison and the Istikbal Prison at Abou Za-abal. Recently he had been transferred to El-Wadi El-Gadeed Prison.

(f) Nabawi Ibrahim El-Sayid Farag, aged 35, was reportedly arrested on 6 July 1993 because his name was included in the case of Tala'i Al-Fateh (case no. 123/1993, part one). As his name was not mentioned in the verdict order of this case, he was released two months after his detention. However, it was reported that he was arrested on 3 November 1993 following his pleading, before a Military Court, on behalf of the accused in the same case. He was currently being detained at El-Wadi El-Gadeed Prison after having been transferred from the Istikbal Tora Prison to the Abou Za'abal Prison and then to the High Security Prison at Tora.

(g) Ibrahim Ali el-Sayid Ibrahim, aged 38, was reportedly held in detention on repeated occasions: from 15 May until 29 June 1992, from 2 July until 13 August 1992 and from 20 December 1992 until 26 June 1993. According to the source, he was rearrested in October 1993 after having been threatened with detention by the Head of the Shebeen El-Koum Prison if he continued his visits as a lawyer to the detainees. It was reported that Mr. Ibrahim has been held in detention since that time and has been transferred to the Shebeen El-Koum Prison, the Al-Hadra Prison, the Abou Za'abal Prison, the Istikbal Tora Prison and recently to El-Wadi El-Gadeed Prison.

(h) Ahmad Mohammed Abdullah Ali, aged 28, was reportedly arrested on 1 October 1993. An administrative order was issued, under the Emergency Law, on 19 October 1993. It was reported that following the hearing of his complaints about the detention order by a competent court, on 4 August 1994, a release order was issued to which the Minister of Interior objected. This judicial decision was reinforced by a subsequent release order on 23 August 1994. Despite this second release order he has been kept in detention without charge or trial. He was currently being detained in Abu Za'abal Prison.

(i) Mohammed Abd El Rasiq Farghali, aged 28, was reportedly arrested on 3 April 1993. An administrative detention order was issued on 13 April 1993. It was reported that following his arrest he was held in the Istiqbal Tora Prison and was then transferred to Abu Za'abal Prison where he was still being detained.

(j) Mahmoud Mohammed Ahmad El Ghatrifi, aged 29, was reportedly arrested on 24 December 1993. It was reported that since then he has been detained at Abu Za'abal Prison without charge or trial.

(k) Ramadan Abu El Hassan Hassan Mohammed, aged 30, was reportedly arrested on 15 February 1993. It was reported that an administrative detention order was issued the next day. Though he received two consecutive release orders, a further detention order was issued on 15 October 1994. According to the source, since then he has been kept in detention without charge or trial. He was transferred from Qena Prison to Abu Za'abal Prison, where he was currently being detained.

(l) Ahmad Ahmad Mos'ad Sobah, aged 32, was reportedly arrested in early January 1994. Immediately after his arrest, a detention order was issued. Since then, it was reported that he has been detained in Istiqbal Tora Prison.

6. It appears from the facts as described above which, it may be recalled, have not been contested by the Government in spite of the possibility given to it, that all the above-mentioned persons are being kept under detention without being charged or tried. Moreover, it may be noted that, with the exception of five (Mohammed Sayid L'eed Hassanien, Ibrahim Ali el-Sayid Ibrahim, Mohammed Abd El Rasiq Farghali, Mahmoud Mohammed Ahmad El Ghatrifi and Ahmad Ahmad Mos'ad Soboh) all of them were the object of judicial decisions ordering their release which the Egyptian authorities refuse to execute by each time issuing new detention orders. The cases of Hassan Gharabawi Shehata Farag and Abdel-Moniem Mohammed El-Srougi are particularly

edifying in this respect, as they were the subject, respectively, of 25 and 8 detention orders following the same number of release orders issued by the judicial authorities. It may further be noted that all these persons have been regularly transferred from one prison to another, during their detention period, and that some of them were allegedly tortured or brutally beaten.

7. In the Working Group's view, there is no doubt that in the present cases there are grave violations of the right to a fair trial, and in particular of the provisions of articles 9, 10, and 11 of the Universal Declaration of Human Rights and articles 9 (2) and (3) and 14 (1), (2) and (3) of the International Covenant on Civil and Political Rights, and that their gravity is such that it confers on the detention of the above-mentioned persons an arbitrary character.

8. In the light of the above the Working Group decides:

(a) The detention of Hassan Gharabawi Shehata Farag, Abdel-Moniem Mohammed El-Srougi, Sha'ban Ali Ibrahim, Mansour Ahmad Ahmad Mansour, Mohammed Sayid L'eed Hassanien, Nabawi Ibrahim El-Sayid Farag, Ibrahim Ali el-Sayid Ibrahim, Ahmad Mohammed Abdullah Ali, Mohammed Abd El Rasiq Farghali, Mahmoud Mohammed Ahmad El Ghatrifi, Ramadan Abu El Hassan Hassan Mohammed and Ahmad Ahmad Mos'ad Soboh, is declared to be arbitrary being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights, and articles 9 (2) and (3) and 14 (1), (2) and (3) of the International Covenant on Civil and Political Rights and falling within Category III of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) Moreover, since (with the exception of the five persons mentioned in para. 6 above) they were regularly ordered released by the judicial authorities and the Egyptian authorities systematically refused to execute the order, their detention is also declared arbitrary falling within Category I of the principles applicable in the consideration of the cases submitted to the Working Group.

(c) To transmit the information concerning the alleged torture to the Special Rapporteur on torture.

9. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of Egypt to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 November 1995.

DECISION No. 46/1995 (PEOPLE'S REPUBLIC OF CHINA)

Communication: addressed to the Government of the People's Republic of China on 22 April 1994.

Concerning: 81 persons (whose names are given in the attached list).

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the cooperation of the Chinese Government in forwarding a reply within 90 days of the transmittal of the letter by the Working Group as regards 44 of the 81 cases concerned.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Chinese Government. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto as well as the comments provided by the source.

5. Due to the large number of cases submitted in the communication, the Working Group has resorted to the following grouping of cases, so as to facilitate their examination:

(a) Cases regarding which the Working Group is in a position to adopt a decision on their merits;

(b) Cases regarding persons who, according to the Government, are no longer in detention (release or death);

(c) Cases regarding persons who, according to the Government, "have had no dealings with the judicial organs".

6. As regards the cases with respect to which the Working Group is in a position to adopt a decision on their merits, all of them are concerned with the exercise of the freedoms of conscience, religion, opinion, expression, assembly and association.

(i) Cases concerning the exercise of the freedom of thought, conscience and religion (art. 18 of the Universal Declaration of Human Rights and art. 18 of the International Covenant on Civil and Political Rights)

- Buddhist nuns having expressed their attachment to their religion through demonstrations accompanied by slogans and by singing religious-patriotic songs and prayers, in particular praising the

Dalai Lama (Pashang Lhamo - Nyidrol - Yeshe - Dekyi Wangmo - Dhondup Dolma); having already spent long time in prison (Sangmo - Dawa Yangkyi - Dawa (Gyaltsem Dolkar) - Palden Yanghyi - Tseten* - Penpa Choezom*); or having merely demonstrated or attempted to demonstrate in public (Rinchen Choedron - Dekyi - Phurbu Dolkar - Kelsang Drolma - Zompa - Goekyi - Rinchen Drolma - Yangkyi - Nyima Migmar - Phurdrol - Ngawang Chemo - Tsering - Rigchoq); or, regarding Muslims, for having distributed leaflets protesting against restrictions imposed on religious activities, in particular by shutting down mosques (Ohmer Khan Mahsun* - Abdul Malik*).

(ii) Cases concerning the exercise of the freedom of opinion and expression (art. 19 of the Universal Declaration of Human Rights and art. 19 of the International Covenant on Civil and Political Rights)

- Accusations concerning the fact of having been in contact with foreign journalists or of having sent information abroad, in particular regarding human rights issues (Zhang Xianliang - Wu Shishen - Ma Tao - Gao Yu*); or, in the case of a historian, of having written and published a book supporting views on the question of Uighur which were different from the official ones (Turgun Almas*); or of having distributed an "unofficial magazine" (Chen Yanbin*); or having drafted and distributed pro-democracy leaflets (Chen Wei* - Rui Chaohuai* - Xing Honwei* - Xu Dongling* - Zhang Guojun*); or a document on the question of human rights entitled "Statement on the Question of Human Rights in China" (Zhang Chunzhu*); this category also comprises the case of a former journalist, founder of the Chinese League of Human Rights (Ren Wanding*); the case of a historian having protested against alleged official discrimination regarding minorities (Kajikhumar Shabdan*); and the case of a school administrator who had sent a petition to the United Nations on alleged human rights violations by Government officials (Mantimyn*).

(iii) Cases concerning the exercise of the freedom of peaceful assembly (art. 20 of the Universal Declaration of Human Rights and art. 21 of the International Covenant on Civil and Political Rights

- In two of the cases submitted to the Working Group persons were convicted and sentenced to prison terms for hanging a banner with the slogan "We have not forgotten 4 June" and for having written and distributed leaflets calling for a public commemoration of the

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* When the Government has not provided information on a case, the person's name is marked by the sign *.

anniversary of 4 June 1989 (Liao Jia'an) or for having put up posters on a college campus to the same effect (Yu Zhuo). In one case a person was convicted and sentenced to a term in a labour camp for having attempted to organize a meeting of veteran pro-democracy campaigners (Fu Shenqi).

(iv) Cases concerning the exercise of the freedom of association, including trade union (art. 20 of the Universal Declaration of Human Rights and art. 22 of the International Covenant on Civil and Political Rights

- In all of the cases concerned, persons were detained for having been active in unrecognized non-violent associations of a political or trade union character, as follows: "Republican Party" (Zhang Minpeng); "China Branch of the Democratic Front" (Yao Kaiwen - Gao Xiaoliang); "China Alliance Association" (Zhou Yuan - Liu Kai); "Beijing Workers Autonomous Federations" (Xiao Delong); "Liberal Democratic Party of China" (Hu Shigen* - Gao Yuxiang* - Lu Jingsheng* - Wang Tiancheng* - Wang Peizhong* - Chen Qinglin*); "China Progressive Alliance" (Kang Yuchun* - Lu Zhigang* - An Ning* - Wang Jianping* - Lu Mingxia* - Meng Zhongwei* (who was also accused of having contacts with the dissident Shen Tong who resides in the U.S.A.); "Social Democratic Party of China" (Ding Mao* - Liu Baiyu* - Xing Shimin* - Liu Wensheng* - Lu Yanghua* - Gao Changyun* - Zhang Jian* - Xu Zhendong* - Lu Yalin*).

7. Firstly, the Working Group takes note of the fact that, in its reply, the Government does not contest the nature of the facts of which the persons concerned are accused. Secondly, the Working Group also notes that neither in the description of the facts as presented by the source nor in the Government's reply was it alleged or asserted that the deeds imputed had been carried out by violent means or by inciting violence; it therefore results that these activities were exercised peacefully. Thirdly, the Working Group notes that the Chinese authorities describe the facts concerned, from a legal point of view, as "taking part in subversive activities" (16 cases out of 44 regarding which the Chinese authorities provided a reply to the Working Group); "disrupting public order" (4 cases); "illegally organizing workers' pickets" (2 cases); or "illegally supplying State secrets to persons outside the country" (2 cases, consisting of contacts with the exiled dissident Shen Tong or communicating to a foreign journalist a text of a speech made by a leader of the Chinese Communist Party during the Party congress).

8. It follows from these considerations that the continued detention of the persons mentioned in § 6 (i-iv) above, is based on the exercise by these persons of their fundamental rights and freedoms guaranteed by articles 18, 19 and 20 of the Universal Declaration of Human Rights and articles 18, 19, 21 and 22 of the International Covenant on Civil and Political Rights.

9. In the light of the above the Working Group decides:

(a) to declare arbitrary in terms of Category II of the principles applicable in the consideration of the cases submitted to the Working Group:

- As contrary to article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights regarding the exercise of the right to freedom of thought, conscience and religion, the detention of Pashang Lhamo - Nyidrol - Rinchen Choedron - Dekyi - Zompa - Goekyi - Rinchen Drolma - Yangkyi Phurdrol - Ngawang Chemo - Tsering - Rigchog - Yeshe - Dekyi Wangmo - Dhonlup Dolma - Sangmo - Dawa Yangkyi - Dawa (Gyaltsen Dolkar) - Palden Yanghyi - Tseten - Penpa Choezom* - Ohmer Khan Mahsun* - Abdul Malik*.

- As contrary to article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights regarding the exercise of the right to freedom of opinion and expression, the detention of Zhang Xianliang - Wu Shishen - Ma Tao - Gao Yu* - Turgun Almas* - Chen Yanbin* - Chen Wei* - Rui Chaohuai* - Xing Honwei* - Xu Dongling* - Zhang Guojun* - Zhang Chunzhu* - Ren Wanding* - Kajikhumar Shabdan* - Mantimyn*.

- As contrary to article 20 of the Universal Declaration of Human Rights and article 21 of the International Covenant on Civil and Political Rights regarding the exercise of the right to freedom of peaceful assembly, the detention of Liao Jia'an et Yu Zhuo.

- As contrary to article 20 of the Universal Declaration of Human Rights and article 22 of the International Covenant on Civil and Political Rights regarding the exercise of the right to freedom of association, including trade unions, the detention of Zhang Mingpen - Yao Kaiwen - Gao Xiaoliang - Zhou Yuan - Xiao Delong - Fu Shengi - Hu Shigen* - Gao Yuxiang* - Lu Jingsheng* - Kang Yuchun* - Lu Zhigang* - An Hing* - Wang Jianping* - Lu Mingxia* - Meng Zhougwei* - Wang Tiancheng* - Wang Peizhong* - Chen Inglin* - Ding Mao* - Liu Baivu* - Xing Shimin* - Xu Zhendong* - Liu Wensheng* - Lu Yanghua* - Gao Changyun* - Zhang Jian* - Xu Zhendong* - Lu Yalin*.

(b) To file the cases of persons who are no longer in detention following their release: Gao Yu, Phurbu Dolkar, Kok Fai Kwok, May Chong, Bam Bang Yang, Ina Yang, Denis Balcombe, Daughin Chan, Paul Star; as well as the case of Nyima Migmar who, according to the source, died two weeks after being released; and the case of Kolsang Drolma who also reportedly died after being released.

(c) To file the cases of persons who, according to the Government, have had no dealings with the judicial organs, namely Yu (or Shen) Liangqing - Huang Xiuming - Liu Kai - Tian Yang (or Tian Xi).

10. Consequent upon the decision of the Working Group declaring the detention of the persons mentioned in § 9 (a) to be arbitrary, the Working Group requests the Government of the People's Republic of China to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 November 1995.

Names of persons submitted to the Government of the People's Republic of China by communication dated 22 April 1994

Hu Shigen, Gao Yuxiang, Kang Yuchun, Lu Zhigang, Lu Jingsheng, Wang Tiancheng, Wang Peizhong, Chen Qinglin, Chen Wei, Zhang Chunzhu, Rui Chaohuai, Xing Honwei, Xu Dongling, Zhang Guojun, An Ning, Wang Jianping, Lu Mingxia, Meng Zhongwei, Ding Mao, Liu Baiyu, Xing Shimin, Liu Wensheng, Lu Yanghua, Gao Changyun, Zhang Jian, Xu Zhendong, Lu Yalin, Yu Liangqing, Huang Xiuming, Tian Yang, Liao Jia'an, Zhang Minpeng, Yu Zhuo, Yao Kaiwen, Gao Xiaoliang, Zhou Yuan, Liu Kai, Xiao Delong, Fu Shenqi, Zhang Xianliang, Chen Yanbin, Gao Yu, Wu Shishen, Ma Tao, Ren Wanding, Pashang Lhamo, Nyidrol, Rinchen Choedron, Dekyi, Phurbu Dolkar, Kelsang Drolma, Zompa, Goekyi, Rinchen Drolma, Yangkyi, Nyima Migmar, Phurdrol, Ngawang Chemo, Tsering, Rigchog, Yeshe, Dekyi Wangmo, Dhondup Dolma, Sangmo, Penpa Choezom, Dawa Yangkyi, Dawa (Gyaltsem Dolkar), Palden Yanghyi, Tseten, Turgun Almas, Ohmer Khan Mahsun, Kok Fai Kwok, May Chong, Bam Bang Yang, Ina Yang, Dennis Balcombe, Daughin Chan, Paul Star, Kajikhumar Shabdan, Mantimyn, Abdul Malik.

DECISION No. 48/1995 (SAUDI ARABIA)

Communication addressed to the Government of the Kingdom of Saudi Arabia on 7 February 1995.

Concerning: Sheikh Salman bin Fahd al-Awda, Sheikh Safr Abdul-Rahman al-Hawali, Sulaiman al-Rushudi, Dr. Khalid al-Duwaish, Tuyan al-Tuyan, Ahmad bin Saleh al-Sa'wi, Dr. Abdullah al-Hamed, Dr. Muhsin al-Awaji, on the one hand and the Kingdom of Saudi Arabia on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government concerned. The Working Group transmitted the reply provided by the Government to the source but, to date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. The communication received from the source, a summary of which was forwarded to the Government, concerned the following persons:

(a) Sheikh Salman bin Fahd al-Awda, aged 39, religious scholar; Sheikh Safr Abdul-Rahman al-Hawali, aged 40, former Head of Shari'a Department at 'Um al-Qura University; Sulaiman al-Rushudi, lawyer; Dr. Khalid al-Duwaish, aged 40, lecturer at al-Imam University; Tuyan al-Tuyan, journalist at 'Akadh newspaper; Ahmad bin Saleh al-Sa'wi, student; and hundreds of others. The above-mentioned were reported to be among hundreds of suspected Sunni opponents of the Government arrested between 13 and 19 September 1994 by the General Intelligence ("al-Mabahith al-'Ama") and other security forces. Most of the arrests were reported in the towns of al-Buraida, al-'Unaiza and al-Bukayriya in al-Qaseem Province, and included religious scholars, businessmen, students and academics. Those arrested were reportedly being held in incommunicado detention in al-Hair prison, General Intelligence headquarters in al-'Ulaisha and in police stations in al-Qaseem and Riyadh. The arrests were reportedly carried out following the transfer to London of an opposition group, the Committee for the Defence of Legitimate Rights (CDLR), which was banned in May 1993.

(b) Dr. Abdullah al-Hamed, a writer and a lecturer at Imam Muhammad bin Saud University in Riyadh, one of the six founding members of the CDLR, and Dr. Muhsin al-Awaji. Both were reportedly arrested on 8 September 1994 by the General Intelligence and taken to an unknown location. Both had been arrested and detained in 1993 and Dr. al-Hamed had allegedly been tortured and deprived of sleep for long periods during his detention. It was alleged that their arrest was due solely to their peaceful expression of their political beliefs.

6. The Government, in its reply, does not deny that the persons concerned were charged with establishing a committee (the "Committee for the Defence of Legitimate Rights" - CDLR), but points out that under the Saudi national legislation the establishment of such a committee requires an official permission beforehand, and that in the present case the establishment of the CDLR constituted a violation of the national legislation. The Government provided the Working Group with further information in which, after analysing the legal instruments and the practical measures aimed at protecting human rights under the Islamic law (Shari'a), it recalled the fact that the Kingdom of Saudi Arabia was not a State party to the International Covenant on Civil and Political Rights, nor to its Optional Protocol.

7. According to the Government Dr. Abdullah al-Hamed, Tuyan al-Tuyan and Ahmad bin Saleh al-Sa'wi "are not at present time under arrest in Saudi Arabia" "and the other five persons" had been charged in due form.

8. Under article 20 of the Universal Declaration of Human Rights and article 22 of the International Covenant on Civil and Political Rights the right to freedom of association may be subjected to restrictions only on two conditions: That such restrictions be prescribed by law, and that they be necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. The restriction placed on the right to freedom of association which consists of the obligation to obtain an authorization beforehand does not meet, in this particular case, these two conditions and cannot therefore be considered as admissible in terms of the aforementioned articles 20 and 22.

9. While it appears from the information provided by the Government that the restriction in question was indeed prescribed by law, it does not appear from the facts submitted to the Working Group's appreciation that the persons concerned had exercised their rights to freedom of opinion and expression and to freedom of association by resorting or by inciting to violence.

10. In the absence of any comments provided subsequently by the source, the Working Group notes the information provided by the Government according to which Tuyan al-Tuyan, Ahmad bin Saleh al-Sa'wi and Dr. Abdullah al-Hamed "are not at present time under arrest in Saudi Arabia". The Group nevertheless regrets not being informed about the circumstances of their possible release, and in particular whether it was accompanied by measures such as expulsion or extradition, or whether the fact that they were "not at present time under arrest" could imply that they were no longer alive.

11. In the light of the above, the Working Group decides as follows:

(a) The detention of Dr. Abdullah al-Hamed, Tuyan al-Tuyan and Ahmad bin Saleh al-Sa'wi is declared to be arbitrary, notwithstanding the fact that they are no longer under detention, being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) The detention of Sheikh Salman bin Fahd al-Awda, Sheikh Safr Abdul-Rahman al-Hawali, Sulaiman al Rushudi, Dr. Khalid al-Duwaish and Dr. Muhsin al-Awaji, is declared to be arbitrary being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

12. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of the Kingdom of Saudi Arabia to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 1 December 1995.

DECISION No. 49/1995 (REPUBLIC OF KOREA)

Communication addressed to the Government of the Republic of Korea on 15 May 1995.

Concerning: Kim Sam-sok, Ki Seh-moon and Lee Kyung-ryol, on the one hand and the Republic of Korea, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of the Republic of Korea. The Working Group transmitted the reply provided by the Government to the source but, to date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. The communication submitted by the source, a summary of which was forwarded to the Government, concerned the following persons:

(a) Kim Sam-sok, aged 28, a writer and a peace and human rights activist, was arrested on 8 September 1993 by some 15 men who did not have warrants of arrest and did not identify themselves (together with his sister who was later tried with him, but was acquitted on most of the charges and released). He was held and interrogated by the Agency for National Security Planning (ANSP, the main intelligence agency in the country) from 8 to 24 September, and was later transferred to Youngdungpo and Seoul Prisons for further interrogation. During his interrogation he was allegedly ill-treated, including by being subjected to sleep deprivation and beating, in order to force him to sign "confessions" of his alleged links with "anti-State" groups. On 23 October 1993 he was charged under article 4 of the National Security Law (NSL) for meeting and passing "State secrets" to "agents" in Japan. He denied the charges and said that during his 45-day interrogation he had been forced to make confessions. Kim Sam-sok was tried before Seoul District Court. On 28 February 1994 Kim Sam-sok was sentenced to seven years' imprisonment. According to the source the group with whom Kim Sam-sok was accused of having links, Hantongnyon, is a group of Korean residents of Japan working on human rights and democracy issues. It was further reported that, during the trial, Kim Sam-sok told the Court that he had not been informed of the accusations against him at the time of his arrest and that throughout his 45-day interrogation he had never been informed of his right to remain silent.

(b) Ki Seh-moon, a former political prisoner, and Lee Kyung-ryol, the Vice-President of the Korean Youth Federation, were arrested on 11 and 12 March 1995 and accused under article 7 of the NSL of preparing a pamphlet condoning the activities of a former political prisoner, Yoon Ki-nam, who died in February 1995 after serving a 28-year prison sentence during which he refused to renounce his alleged communist views. The pamphlet in question was alleged to have called Yoon Ki-nam a "patriotic fighter" and a "fighter for national reunification", in violation of article 7 of the NSL which punishes the act of "praising", "encouraging" or "benefiting" North Korea. The two men were taken, after their arrest, to Chonnam Police Station for questioning. The source alleged that the two men were being held for the non-violent exercise of their right to freedom of expression.

6. With regard to Kim Sam-sok, the Government, in its reply, reported that on 7 July 1994, Kim Sam-sok was sentenced to 4 years in prison and to "suspension of qualification" for 4 years. As regards the criminal charges against Kim Sam-sok, the Government informed the Working Group that he was charged with having met in February 1992, in Japan, with the president of " Hantongnyon"(described by the Government as an "anti-State organization"); having been in contact in Japan with a leading member of that North Korean organization and having received from him the sum of 500,000 yen for collecting information which he had to provide to him.

7. The Government stressed in its reply that the money received by Kim Sam-sok originated from "North Korea, a country whose ultimate objective is to overthrow the Republic of Korea to unify both countries under the flag of its own kind of communism", and that Kim Sam-sok had "collected and passed information on military information and State secrets to North Korea, causing harm to national Security". He was indicted under the National Security Law, but denied at his trial having collected and spied out State secrets.

8. The Government rejected the allegation that Kim Sam-sok had been tortured or ill-treated during his interrogation, but informed the Working Group that an investigation was under way by the Seoul District Public Prosecutors Office into the torture allegations, following a complaint by Kim Sam-sok's wife.

9. As regards Ki Seh-moon, the Government reported that the main criminal charges against him were that, in May 1993, he produced, published and distributed the memoires of Kim Se-won, a member of a North Korean armed unit, and that, in February 1995, he organized the funeral ceremony of Yoon Ki-nam, the commander of the same armed unit who was described by the Government as "an unconverted radical leftist political prisoner". Ki Seh-moon was also accused of having praised the North Korean regime. On 30 May 1995 he was convicted on these charges and sentenced to two years in prison and to a "suspension of qualifications" for two years.

10. As for Lee Kyung-ryol, he also participated, according to the Government, in organizing the above-mentioned funeral. During the period June 1994 to March 1995 he "organized and led four unlawful assemblies with the motive to praise North Korean radical communist ideology". He was arrested on 12 March 1995 and his trial had not yet taken place. The Government stressed that he had taken part in violent unlawful demonstrations,

and that his actions clearly denied basic order of a free and democratic society and could not be accepted as one's exercise of the right to freedom of expression. Both Ki Seh-moon and Lee Kyung-ryol had been arrested and prosecuted on grounds of violating the National Security Law.

11. It appears from the above that Kim Sam-sok, Ki Seh-moon and Lee Kyung-ryol, in their activities, had merely exercised their rights to freedom of opinion and expression, freedom of peaceful assembly and freedom of association, guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights, and articles 19, 21 and 22 of the International Covenant on Civil and Political Rights, to which the Republic of Korea is a party. Furthermore, the Working Group considers that it does not appear from the analysis of the facts submitted to its appreciation that the persons concerned had exercised their above-mentioned rights by resorting or by inciting to violence, or that, in their activities, they had harmed the rights or reputations of others, national security, public order or public health or morals.

12. As regards the allegations made by the Government that these persons were involved in spying activities, the Working Group is of the opinion that these allegations are formulated in vague and general terms and that they do not appear clearly from the facts, as described.

13. The Working Group therefore believes that the detention of Kim Sam-sok, Ki Seh-moon and Lee Kyung-ryol, since the day of their arrest, is solely motivated by their activities undertaken in free exercise of their rights to freedom of opinion and expression, freedom of peaceful assembly and freedom of association, guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights, and articles 19, 21 and 22 of the International Covenant on Civil and Political Rights, respectively.

14. In the light of the above, the Working Group decides:

(a) The detention of Kim Sam-sok, Ki Seh-moon and Lee Kyung-ryol is declared to be arbitrary being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) The Working Group decides, furthermore, to transmit the information concerning the alleged torture to the Special Rapporteur on the question of torture.

15. Consequent upon the decision of the Working Group declaring the detention of Kim Sam-sok, Ki Seh-moon and Lee Kyung-ryol to be arbitrary, the Working Group requests the Government of the Republic of Korea to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 1 December 1995.

DECISION No. 1/1996 (SRI LANKA)

Communication addressed to the Government of Sri Lanka on 26 August 1994.

Concerning: 36 persons (whose names are given in para. 5 below), on the one hand and the Socialist Democratic Republic of Sri Lanka, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of Sri Lanka. The Working Group transmitted the reply provided by the Government to the source by letter dated 20 September 1995 but, to date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. The facts as alleged and the Government reply thereto, are as follows:

1. Mr. S. Sellathurai, was allegedly arrested at his working place on 5 April 1994 by Sri Lankan Crime Investigation Bureau in Colombo, for inquiry, on suspicion of terrorism. He is still under their custody, without having been brought to any court, being detained at the Prison of Colombo - 12 (known as 4th floor Bureau). He was reportedly arrested without any charge. According to the Government he was produced in the Magistrate Court, Fort, in Case No. B 34032 and discharged on 24 August 1994.

2. Mr. K.A.J. Arachchige, was reportedly arrested on 11 February 1991 and was brought to the army camp at Panagoda, as a suspect of anti-governmental activities. According to the Government he is charged in High Court, Kalutara Case Nos. 272, 274, 282 and 289/93.

3. Mr. T.W. Priyantha Vithanachchi, was reportedly arrested at his home on 19 December 1992 by S.C.D. Colombo; he is now reportedly at Boossa detention camp. According to the Government he was produced in the Magistrate Court, Balapitiya, in case Nos. 10 and 11/94 and was released on bail on 6 December 1994.

4. Mr. H.M.P.G. Gunaratne Banda, was allegedly arrested on 3 July 1992, as a suspect of JVP activities, at Pettah by the Pettah Police and was taken to the Ruttota Police on the night of the same day. According to the source, he is now at the Magazine Prison, under the number B-2763. He is allegedly suspected of JVP activities only because he was a student at Kalani University. According to the Government he was discharged in High Court, Kandy, Case No. 95/93, on 21 October 1994.

5. Mr. D.D.T.S. Divadalage, was reportedly arrested on 21 February 1991 at Kalutara by the Kalutara Police S.C.U. According to the Government he is charged in High Court, Colombo, Case No. 5069. The case is pending.

6. Mr. D.P.N. Jayawardena, was allegedly arrested on 7 February 1991 at his working place in Maradhagahamula by the Gampaha Police. According to the source, the authorities did not give any reason for the arrest and for the detention. According to the Government he is charged in High Court, Gampaha, Case No. 57/93. He is on bail.

7. Mr. J.L. De Silva, Sri Lanka Army soldier, was reportedly arrested on 31 October 1989 by the Sri Lanka Army at Z/SLLI Headquarters in Colombo. According to the source, he was brought to Walanwatta army camp on 17 November 1989, day on which he was allegedly severely beaten; on 25 November 1989, he was taken away to Ambalangoda army camp, where he was allegedly hanged and hit with clubs and small arms: he was severely wounded (his right leg was broken) and got no medical treatment. On 11 February 1990, he was allegedly brought to Galle Police and again ill-treated during a questioning about his "anti-governmental activities" which he denied; nevertheless, he was forced to sign a declaration. On 21 February 1990, he was taken away to Boossa detention camp, where he is still being detained. According to the Government he was charged in High Court, Galle, Case No. 13/93 and discharged on 7 July 1994.

8. Mr. L.P.D.M. Kankanange, was allegedly arrested on 20 July 1991 at Ginimeblagaha by the Baddegama Police. According to the source, he is detained for no fair reason since 26 September 1991 at the Boossa army camp, under the emergency regulations. According to the Government he was charged in High Court, Galle, Case Nos. 1397, 1399 and 1404/94 and was discharged as the charges were withdrawn.

9. Mr. W.P.C. Fonseka, was reportedly arrested on 22 December 1993 at Old Pier, Thalaimannar, by the Pesalai Police. According to the source, he was arrested only on suspicion and has since been detained at the Magazine Jail in Colombo. According to the Government he was produced in Magistrate Court, Mannar, on 31 October 1994 and discharged on the advice of the Attorney General.

10. Mr. K.C.S. Perera, was allegedly arrested on 18 February 1990 in Chandana, by a group of unknown people coming out of a van, who covered his eyes and took him away. He was arrested because of suspected JVP activities. According to the Government he was charged in High Court, Colombo (6), Case No. 47779/91. The case is pending.

11. Mr. D.M. Karunaratne, was reportedly arrested on 17 September 1990 by the Mahakalugolla Police. According to the Government he was released after rehabilitation on 11 July 1992.

12. Mr. D.M. Wijedasa, was allegedly arrested on 5 March 1991 by the police. First, he had been brought to Badulla Police Station, then to Boossa Camp. According to the Government he was discharged in High Court, Badulla, Case No. 180/92 on 22 August 1994.

13. Mr. C.K. Sudda Hewaga (or Sudasinghe), was reportedly arrested on 10 August 1991 at Gold Nagoda Mapala Gama by the Kalutara Police. He was allegedly arrested as a result of a false petition against him. According to the Government he was charged in High Court, Kalutara, Case No. 240/92. The case is pending.

14. Mr. A.J. Mudiyansalage, was reportedly arrested on 21 February 1992 at Attempitiya by the Bandarawela Police (G.O.C. Branch), accused of murder (which, according to the source, is a groundless accusation). According to the Government he was charged in High Court, Badulla, Case No. 93/92 and discharged on 28 June 1994, due to insufficient evidence.

15. Mr. G.S. Thail, was reportedly arrested on 27 May 1990, probably by the police, in Colombo. According to the Government he was released on 21 September 1994.

16. Mr. E.M.H. Banda, was allegedly arrested on 27 July 1991 by police forces at his house. He was arrested after the villagers had spread the rumour that he was a JVP helper. The authorities reportedly accused him of JVP activism and of murder. According to the Government he was released on 26 November 1991.

17. Mr. B.R. Chandradasa, was allegedly arrested on 2 January 1990 by the Kuliyapitiya Police at Kurunagala town, suspected of JVP activities. According to the Government he was charged in High Court, Kuliyapitiya, Case No. 154/93 and discharged on 7 June 1993.

(No. 18 same as No. 14)

19. Mr. T.M. Senaviratne Banda, was allegedly arrested on 15 July 1991 at 5.30 pm by the Polonnaruwa S.C.U. and taken to Aralaganwila Police Station. According to the source, he was accompanied the next day to Polonnaruwa S.C.U. where he was allegedly severely assaulted during three days. According to the Government he was charged in High Court, Kalutara, Case No. 264/93 and sentenced to two years rigorous imprisonment, suspended for seven years, on 13 December 1994.

20. Mr. K.P.G. Jayasiri, was allegedly arrested on 5 April 1989 at his home by unknown forces. According to the Government he is charged in High Court, Case No. 626/91. The case is pending. He is presently an inmate of the Angoda Mental Hospital.

21. Mr. A.K. Kankanamage, was allegedly arrested on 14 December 1988 at his home by the C.I.D. on the ground of preventing JVP troubles. According to the Government he is charged in High Court, Colombo, case No. 4509/90. The case is pending. He is in remand.

22. Mr. C.S.R. Pathirennehalage, was reportedly arrested on 10 August 1990 by the Gampana Police. According to the source, he was detained at the Pelawatta camp, then at the Magazine Prison and is now being detained at Boossa Camp. He is allegedly accused of JVP activism, but the source denies these allegations. According to the Government he was charged in High Court, Gampana, Case No. 57/91 and sentenced to three years rigorous imprisonment 1 February 1994.

23. Mr. P.B. Gampola, was reportedly arrested on 11 October 1989 at his home by the O.I.C. and the Talangama Police. According to the Government he was charged in High Court, Colombo, case Nos. 5020/92 and 5100/92 and was acquitted in both cases.

24. Mr. R.D.A. Rajapakse, was allegedly arrested on 10 October 1992 by the Kirulapana Police. According to the Government Magistrate Court, Fort, case No. 71162 is pending against him. He is on bail.

25. Mr. Ruchiratne Ratnayake Mudiyanselage, was reportedly arrested on 2 January 1991 at Mahawatta, Narahenpita, by the Narahenpita Police. According to the Government High Court, Badulla, Case No. 70/93 is pending against him. He is on bail from 14 September 1994.

26. Mr. S.W.R. Asama Ajith Bandara, was allegedly arrested on 1 November 1989 in Ehiligoda town. According to the Government he was charged in High Court, Ratnapura, case No. 142/93 and discharged on 21 November 1994.

27. Mr. Premathilaka Gardiahewage, was reportedly arrested on 27 May 1990 in Colombo-Kandana by the Colombo Divisional Security Coordination Office. According to the Government he was charged in High Court, Badulla, Case Nos. 226/93 and 351/93. He was discharged on 21 September 1994 due to insufficient evidence.

28. Mr. D.W. Heerasinghe, was allegedly arrested on 5 March 1989 next to the boutique of the village. According to the Government he was charged in High Court, Badulla, Case No. 120/92. The case is pending. He is on bail.

29. Mr. M.J.S. Hameed, was reportedly arrested on 14 September 1992 by the Maradana Police. According to the Government Magistrate Court, Mt. Lavinia, Case No. 836/8 is pending against him. He is detained at the Mahara Prison.

30. Mr. Chandrapala alias Siripala Ambepitiyage Don, was allegedly arrested on 13 March 1992 at #274/3 Makola South, Makola, by the police. According to the Government High Court, Colombo, case Nos. 6626 and 6629 are pending against him.

31. Mr. Poojyasoma Perera Moraherage, was reportedly arrested on 17 August 1992 by the police, at his home. According to the Government he is charged in High Court, Colombo, Case No. 6629. The case is pending.

32. Mr. Gunasena Geemunige, was reportedly arrested on 2 March 1994 at Thundula by the Meegahatenna Police. He is allegedly suspected of JVP activities. According to the Government he was produced in Magistrate Court, Mathugama, Case No. BR 378/94. The case is pending.

33. Mr. L.M. Udayaruwan, was reportedly arrested on 10 May 1993 as he was presenting himself before the Military Police. He is allegedly charged under the emergency law because of a petition made by enemies. According to the Government that person, a member of the security forces, has been discharged from the Sri Lankan army, but no prosecution has been initiated against him by the authorities.

34. Mr. K.D.J. Wijeratne, was reportedly arrested on 22 August 1988 at Waththegama by the Kandy Police. He was allegedly arrested as a suspect in connection with the robbery of the People Bank of Digana. According to the Government he is indicted in High Court, Colombo No. 4, Case No. 4091/89 in connection with the above-mentioned robbery.

35. Mr. M. Sunil Mendis, was reportedly arrested on 11 March 1990 at Nayakolawatte, Yahalabedde, Haputale, by the Haputale Police, accused of involvement in JVP poster propaganda. He was allegedly charged with murder: the case is pending before the Supreme Court. According to the source the charges against him are false and baseless. According to the Government he was charged in High Court, Badulla, Case No. 240/93 and was discharged on 21 September 1994.

36. Mrs. S. Ponnammah, was reportedly arrested on 2 December 1989 by the Sri Lankan army at Dambatenne Estate, Bandara Eliya Division, Dambatenne R.O., Via Haputale, on suspicion of JVP activities. According to the Government this person was not arrested by the security forces or the police.

37. Mr. Rohana Gallage, was allegedly arrested on 9 September 1993 at his home. According to the Government he is charged in High Court, Balapitiya, Case No. 15/94. The case is pending.

6. It appears from the above information that 22 persons among those concerned are no longer being detained, either since they were discharged, acquitted, finished serving their sentence, or released on bail pending their trial. They are the following:

S. Sellathurai, T.W. Priyantha Vithanachchi, H.M.P.G. Gunaratne Banda, D.P.N. Jayawardena, J.L. De Silva, L.P.D.M. Kankanamge, W.P.C. Fonseka, D.M. Karunaratne, D.M. Wijedasa, A.J. Mudiynasalage, G.S. Thail, E.M.H. Banda, B.R. Chandradasa, T.M. Senaviratne Banda, P.B. Gampola, R.D.A. Rajapakse, Ruchiraratne Ratnayake Mudiyanselage, S.W.R. Asama Ajith Bandara, Premathilaka Gardiahewage, D.W. Weerasinghe, L.M. Udayaruwan and M. Sunil Mendis.

7. Since the above-mentioned persons are said by the Government not to be in detention, and since that affirmation was not challenged by the source, the Working Group considers that it may apply to them the rule set up by paragraph 14.1 (a) of its revised methods of work and file their cases.

8. Mr. C.S.R. Pathirennehalage (No. 22 in the above list) was sentenced on 1 February 1994 to three years' rigorous imprisonment. Since he was arrested on 10 August 1990, the Working Group presumes that at present he is no longer under detention, and his case is therefore also filed in keeping with paragraph 14.1 (a).

9. According to the Government Mrs. S. Ponnammah (No. 36 in the list), has never been detained. This has not been refuted by the source. Her case is therefore also filed.

10. Eleven persons among those concerned have been charged, but neither the source nor the Government indicated the facts motivating their imprisonment; on the other hand no violations to their right to fair trial have been indicated to the Working Group, that would have conferred on their deprivation of freedom an arbitrary character. The persons concerned are the following:

K.A.J. Arachchige, D.D.T.S. Divadalage, K.C.S. Perera, C.K. Sudasinghe, K.P.G. Jayasiri, A.K. Kankanamage (since 1998), M.J.S. Hameed, Chandrapala alias Siripala Ambepitiyage Don, Poojyasoma Perera Moraharage, Gunasena Geemunige and Rohana Gallage.

11. In the light of the above the Working Group decides:

(a) Having examined the available information and without prejudging the nature of the detention, the Working Group decides to file the cases of S. Sellathurai, T.W. Priyantha Vithanachchi, H.M.P.G. Gunaratne Banda, D.P.N. Jayawardena, J.L. De Silva, L.P.D.M. Kankanamge, W.P.C. Fonseka, D.M. Karunaratne, D.M. Wijedasa, A.J. Mudiynasalage, G.S. Thail, E.M.H. Banda, B.R. Chandradasa, T.M. Senaviratne Banda, P.B. Gampola, R.D.A. Rajapakse, Ruchiraratne Ratnayake Mudiyanselage, S.W.R. Asama Ajith Bandara, Premathilaka Gardiahewage, D.W. Weerasinghe, L.M. Udayaruwan, M. Sunil Mendis, C.S.R. Pathirennehalage and Mrs. S. Ponnammah, in terms of paragraph 14.1 (a) of its revised methods of work.

(b) The cases of K.A.J. Arachchige, D.D.T.S. Divadalage, K.C.S. Perera, C.K. Sudasinghe, K.P.G. Jayasiri, A.K. Kankanamage (since 1998), M.J.S. Hameed, Chandrapala alias Siripala Ambepitiyage Don, Poojyasoma Perera Moraharage, Gunasena Geemunige and Rohana Gallage are maintained pending for further information, in terms of paragraph 14.1 (c) of the revised methods of work of the Working Group.

Adopted on 23 May 1996.

DECISION No. 2/1996 (NIGERIA)

Communication addressed to the Government of Nigeria on 3 October 1995.

Concerning: Karanwi Meschack, Mitee Batom and Loolo Lekue, on the one hand, and the Federal Republic of Nigeria, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Nigeria. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The communication, a summary of which has been transmitted to the Government, concerns the following persons:

(a) Karanwi Meschack, aged 39, lecturer at the University of Port Harcourt and an official of the Movement for the Survival of the Ogoni People (MOSOP);

(b) Mitee Batom, aged 36, estate management expert and member of MOSOP;

(c) Loolo Lekue, aged 53, self-employed, member of MOSOP.

The above-named individuals were reportedly arrested on 4 August 1995 in Port Harcourt Rivers State, following their appearance before the Commonwealth Human Rights Committee that toured Nigeria in July 1995. The warrantless arrests were alleged to have been carried out by the Nigeria Police Mobile Force, Rivers State Command, under the order of the Commissioner of Police, Rivers State Command. The forces holding the defendants in detention at a Special Military Camp, AFAM, near Port Harcourt, were said to be those of the State Intelligence and Investigations Bureau (SIIB). The source reported that the detainees were not formally charged and that their arrests constituted

part of a scheme on the part of the military authorities to muzzle MOSOP and to force the Ogoni to abandon their legitimate campaign for social justice and respect for the rights of the minority Ogoni people. Decree No. 2 of 1984 as amended by Decree No. 11 of 1994 (State Security/Detention of Persons Decree), was reported to be the relevant legislation which authorized the security forces to detain for three months without trial, individuals whom they consider to pose a security threat. The source also claimed that the initial three months period could be extended by the military Head of State, and that the right to apply for habeas corpus has been abrogated by Decree No. 14 of 1994.

6. It appears from the above allegations which, it may be recalled, were not refuted by the Government despite the opportunity given to it to do so, that the detention of the above-mentioned persons is solely motivated by their appearance before the Commonwealth Human Rights Committee during its visit to Nigeria in July 1995, in order to peacefully defend the rights of the Ogoni minority in that country. Decree No. 2 of 1984 as amended by Decree No. 11 of 1994 which authorized their arrest without warrant and their detention for three months without charge or trial for the sole reason of constituting a threat to the State security, is in itself incompatible with international human rights instruments, including the International Covenant on Civil and Political Rights to which Nigeria is a party. This is all the more so since the abrogation, by Decree No. 14 of 1994, of the possibility to apply for habeas corpus. The Working Group therefore considers that the detention of Karanwi Meschack, Mitee Batom and Loolo Lekue constitutes a violation of articles 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, guaranteeing the right to fair trial, and that the violation is of such gravity that it confers on the deprivation of freedom an arbitrary character.

7. In the light of the above the Working Group decides:

(a) The detention of Karanwi Meschack, Mitee Batom and Loolo Lekue is declared to be arbitrary being in contravention of articles 8, 9, 10, 11 and 19 of the Universal Declaration of Human Rights, and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights to which Nigeria is a party and falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) To transmit the present decision to the Secretary-General, in conformity with Commission on Human Rights resolution 1996/70 entitled "Cooperation with representatives of United Nations human rights bodies".

8. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of Nigeria to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 22 May 1996.

DECISION No. 3/1996 (VIET NAM)

Communication addressed to the Government of Viet Nam on 3 October 1995.

Concerning: Do Trung Hieu and Tran Ngoc Nghiem, on the one hand, and the Socialist Republic of Viet Nam, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of Viet Nam. The Working Group transmitted the reply provided by the Government to the source but, to date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. According to the communication Do Trung Hieu, a founder member of the Club of Former Resistance Fighters, was arrested on 13 June 1995 at his residence in Ho Chi Minh City. The authorities reportedly brought him home on 14 June, showed him an arrest warrant and again took him into custody. Hieu is the author of an essay concerning the policy and line of action of the Vietnamese Communist Party, within which he had been in charge of religious affairs. The source further states that Hieu was held in a centre for interrogation in Ho Chi Minh City, on the charge of having committed acts of propaganda against the socialist regime.

6. Tran Ngoc Nghiem, known under the pseudonym of Hoang Minh Chinh, aged 76 and former director of the Institute of Marxist-Leninist Philosophy, is reported to have been arrested on 14 June 1995 and accused of "anti-socialist propaganda". The source states that Nghiem had already been imprisoned from 1967 to 1973 and from 1981 to 1987 and that those periods of detention were linked to accusations of "revisionism". Since his release, he is said to have written and issued several appeals to the Vietnamese Communist Party for his name to be cleared. In a recent article, he urges the deletion from the Vietnamese Constitution of article 4, relating to the predominant role of the Vietnamese Communist Party.

7. According to the source of the communication, the above-mentioned persons were arrested and taken into custody for the non-violent exercise of their right to freedom of expression.

8. In its reply, the Government of Viet Nam states that the two persons in question were arrested on 14 June 1995 and tried in a public hearing by the People's Court of the City of Hanoi, which sentenced them to 15 and 12 months' imprisonment, respectively, for defamation of State bodies and social organizations, under article 205 of the Vietnamese Penal Code, which punishes any person who "abuses democratic freedoms to jeopardize the interests of the State and social organizations".

9. As the Working Group has had occasion to emphasize in several decisions concerning Viet Nam and in the report it prepared following its visit to that country, the major defect of vague and imprecise charges of the kind provided for the above-cited article 205 is that they do not distinguish between armed and violent acts capable of threatening national security, on the one hand, and the peaceful exercise of the rights to freedom of opinion and of expression, on the other. The Working Group is once again convinced, therefore, that the above-mentioned persons were arrested and taken into custody solely on account of their opinions, in violation of the rights guaranteed by article 19 of the Universal Declaration of Human Rights and by article 19 of the International Covenant on Civil and Political Rights, to which the Socialist Republic of Viet Nam is a party.

10. In the light of the above the Working Group decides:

> The detention of Do Trung Hieu and Tran Ngoc Nghiem is declared to be arbitrary being in contravention of article 19 of the Universal Declaration of Human Rights and of article 19 of the International Covenant on Civil and Political Rights, to which the Socialist Republic of Viet Nam is a party, and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

11. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of the Socialist Republic of Viet Nam to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 23 May 1996.

DECISION No. 4/1996 (MOROCCO)

Communication addressed to the Government of the Kingdom of Morocco on 3 October 1995.

Concerning: Saaba Bent Ahmed, El Mokhtar Ould Saheb, El Ansari Mohamed Salem, Khadidjatou Bent Aij and Malaenin Ould Abdenabi, on the one hand, and the Kingdom of Morocco, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than 90 days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Moroccan Government. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the communication, the above-mentioned persons were arrested and taken into custody for having organized a demonstration in support of the Polisario Front on 11 May 1995 in Laayoune in western Sahara. They are said to have been prosecuted for "jeopardizing the external security of the State and the territorial unity of Morocco", for having demonstrated, distributed leaflets and shouted slogans in favour of an independent Sahrawi State. It is alleged that one of the detainees, Malaenin Ould Abdenabi, died as a result of torture inflicted during his imprisonment. In view of that death, fears have been expressed concerning the fate of the other detainees.

6. From the facts as described in the previous paragraph, it appears that the persons in question have been held without charge since May 1995. Furthermore, they do not seem to have been brought promptly before a judge, as provided for in article 9, paragraph 3, of the International Covenant on Civil and Political Rights, or to have been tried within a reasonable time by an independent and impartial tribunal, in accordance with article 14, paragraph 3 (c), of the Covenant. In various documents attached to the communication, several human rights organizations report various similar arrests which are alleged to have occurred for the same reasons in Laayoune in May and June 1995 and to have led to summary proceedings before special courts, such as the Permanent Tribunal of the Royal Armed Forces, resulting in

the imposition of 15- to 20-year sentences. Those organizations believe the sentences to be unjustified, not being commensurate with the acts for which the persons concerned were prosecuted and which at most constituted the offence of undeclared demonstration, all the more so as the persons in question are said merely to have been engaged in the peaceful exercise of their right to freedom of opinion. It is furthermore alleged that most of them were subjected to torture and ill-treatment, as appears to have been the case with Malaenin Ould Abdenabi, who is said to have died from torture during his imprisonment.

7. The Working Group is thus of the opinion that the detention of Saaba Bent Ahmed, El Mokhtar Ould Saheb, El Ansari Mohamed Salem, Khadidjatou Bent Aij and Malaenin Ould Abdenabi took place in contravention of articles 8 and 10 of the Universal Declaration of Human Rights and of articles 9, paragraph 3, and 14 of the International Covenant on Civil and Political Rights, to which the Kingdom of Morocco is a party, relating to the right to a fair trial, and that the gravity of this contravention is such that it confers on the detention an arbitrary character.

8. In the light of the above, the Working Group decides:

(a) The detention of the above-mentioned persons is declared to be arbitrary being in contravention of articles 8 and 10 of the Universal Declaration of Human Rights and of articles 9, paragraph 3 and 14 of the International Covenant on Civil and Political Rights, to which the Kingdom of Morocco is a party, and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) The Working Group furthermore decides to transmit this decision to the Special Rapporteur on the question of torture and to the Special Rapporteur on extrajudicial, summary or arbitrary executions.

9. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of Morocco to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 23 May 1996.

DECISION No. 5/1996 (TUNISIA)

Communication addressed to the Government of Tunisia on 3 October 1996.

Concerning: Aïcha Dhaouadi, Tourkia Hamadi, Mahfoudhi Abderrazak and Najib Hosni, on the one hand, and Tunisia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Tunisian Government. The Working Group transmitted the reply provided by the Government to the source but, to date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. The communication, a summary of which was forwarded to the Government, concerned the following persons:

(a) Aïcha Dhaouadi, a primary school teacher in Bizerte, who is said to have been taken into custody on 4 November 1993, questioned for the whole day and then released in the evening. This form of detention is alleged to have continued for several consecutive days. In early 1994 Aïcha Dhaouadi was reportedly tried and sentenced to imprisonment for two years and three months for having supported a political party (al-Nahda), and for the unauthorized collection of donations, but was released on bail. In early 1995, her sentence was reduced on appeal to nine months, and on 19 May 1995 she was arrested in order to serve that sentence. According to the source, her conviction was based on a misapplication of the law of 8 May 1922 on the unauthorized collection of funds and donations. The source reports Aïcha Dhaouadi as saying that she was forced to sign a self-incriminating statement by the police without having been allowed to read it beforehand.

(b) Tourkia Hamadi, aged 29 and a mother of two children, has reportedly been held since 10 July 1995 in the Tunis prison, a very long way from her family home in Gabes. Mrs. Hamadi was tried on 5 May 1995 on charges of having helped her husband to flee from Tunisia and of belonging to al-Nahda, in contravention of the Organization of Associations Act of 7 November 1959, and sentenced to six months' imprisonment. She was arrested on 10 July after confirmation of her sentence on appeal by the Gabes court.

According to the source, from 1992 onwards, and especially as of October 1994, Tourkia Hamadi had frequently been taken into custody and questioned about the activities of her husband (who had left for France in 1991 to request political asylum). The source further states that relatives and especially the wives of al-Nahda sympathizers in prison or exile are often being taken into custody for questioning on the whereabouts of their husbands and sources of income. The source affirms that Tourkia Hamadi has neither advocated nor used violence, and that her detention is due solely to her participation in non-violent political activities.

(c) Mahfoudhi Abderrazak, aged 52 and an anaesthetist at the Menzel Bourguiba hospital, was reportedly arrested at his home on 4 July 1995 by four inspectors. Following a search of his home, the inspectors are said to have seized the detainee's telephone. Mahfoudhi was reportedly questioned about and asked to explain two recent journeys, one to Mecca and the other to France. Other persons working in the same hospital were reportedly also arrested at the same time. According to the source, the family has no news of Mahfoudhi. It would appear that the arrest was made not by the police but by the services of the Ministry of the Interior. Mahfoudhi was reportedly being detained without charge or trial.

(d) Najib Hosni, a lawyer known for his human rights activities, was reportedly arrested on 15 June 1994. He is said to have been held in custody since then, for a period exceeding the 14 months authorized by article 85 of the Tunisian Code of Penal Procedure. The source states that the complaints made against Hosni are of a civil character not justifying detention. With the exception of one visit from the former head of the Tunisian Bar Association, Hosni has reportedly not been allowed to meet his lawyers since January 1995, following his refusal to agree to the conditions for such visits, which would entail degrading body searches.

6. In its reply, the Tunisian Government essentially states that all the above-mentioned persons were formally arrested, prosecuted and sentenced for offences under the Tunisian Penal Code and, particularly as regards the first two persons, for their membership of an unrecognized extremist movement called "Ennahda", which promotes hatred and racial and religious fanaticism, and for the assistance they gave to that movement either by collecting money on its behalf (case of Aïcha Dhaouadi), or by helping a member of the movement to escape (case of Tourkia Hamadi, who is said to have given her husband the passport of a deceased student to enable him to flee to France). Abderrazak Mahfoudhi was arrested on 17 July, and was charged and then committed to the Bizerte prison on 24 July 1995 for association with criminals and membership of a clandestine organization inciting to hatred and racial and religious fanaticism. Thus, contrary to the allegations of the source, the Government states that he had not been detained without charge. Concerning Najib Hosni, the Government points out that his inculpation for forgery and use of forged instruments was effected under ordinary law and therefore not related at all to his human rights activities. The Tunisian Government further states that all the said persons throughout the judicial proceedings enjoyed full guarantees of a fair trial and of the observance of the rights to defence. They were also allowed visits from their families during custody and were able to appeal against their convictions in first instance. Thus, the Court of Appeal reduced from two years to eight months the sentence imposed on

Mrs. Dhaouadi for membership of an unrecognized movement and upheld the sentence against Mrs. Touzkia Hamadi. Likewise, Najib Hosni applied for judicial review of the decision of the Indictment Divisions, which referred him to the Criminal Chamber of the Court of Appeal at Bef, for a hearing on 11 October 1996. On 8 November 1995 the Court of Cassation rejected the appeal and the case was enrolled at a hearing on 27 December 1996 of the Criminal Chamber.

7. A consideration of the facts as they emerge from the communication from the source and, from the reply of the Tunisian Government enabled the Working Group to make the following observations:

(a) The persons in question were prosecuted and sentenced under provisions of Tunisian criminal law. The offences of which they are accused, such as membership of an illegal or unauthorized movement, are not in themselves incompatible with the relevant international human rights instruments.

(b) The source alleges only that the courts before which they appeared or were tried were not independent and impartial and that they were not assisted by counsel of their own choosing.

(c) They had access to remedies which proved to be effective in the case of Mrs. Aicha Dhaouadi.

8. In the light of the above, the Working Group decides that the detention of the above-mentioned persons is not arbitrary.

Adopted on 23 May 1996.

DECISION No. 6/1996 (NIGERIA)

Communication addressed to the Government of Nigeria on 3 October 1995.

Concerning: General Olusegun Obasanjo, former Head of State of Nigeria and 19 other persons, as well as Dr. Beko Kuti, Dr. Tunji Abayomi and Chima Ubani, on the one hand, and the Federal Republic of Nigeria, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Nigeria. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The communication, a summary of which has been transmitted to the Government, concerns the following persons:

(a) General Olusegun Obasanjo (former Head of State); Captain U.S. Suleiman; Captain A.A. Ogunsunyi; Captain M.A. Ibrahim; Lieutenant-Colonel Peter Ijaola; Second Lieutenant Richard Emonvbe; State Security Office Julius Abajo; Kunle Ajibade, Journalist of *The News* magazine; C.P. Izuorgu; Alhaji Sanusi Mato; and Felix Ndamaigida. (All the above have been reportedly sentenced to life imprisonment.) Colonel D. Usman; Staff Sergeant Patrick Usikpeko; Shehu Sani, vice-chairman of Campaign for Democracy; Christine Anyanwu, Editor-in-Chief of *The Sunday Magazine*; Ben Charles Obi, editor of *Classique* magazine; and Queenett Allogoa, female companion of Colonel Gwadabe. (All the above have reportedly been sentenced to prison terms ranging from 2-25 years). Lieutenant-Colonel I. Shaibu; Colonel Emanuel Ndubueze; and Akinloye Akinyemi. (The three above-mentioned have reportedly also been convicted, but their sentence was not known to the source.) The above-named defendants, in addition to 40 unidentified detainees, were reported to have been convicted by the Special Military Tribunal, on charges ranging from treason to the publishing of articles deemed critical of the Government. Their trials by the Special Military Tribunal

have allegedly been riddled with unfair practices. The Military Tribunal, which was reportedly composed of military officers exclusively, allegedly failed to meet the standards of independence and impartiality guaranteed in the provisions of various international legal instruments. The source claimed that the rights connected with a fair trial were denied to the detainees. They were allegedly denied the right to counsel of their choice; they were not allowed to address the court in regard to their defence; they were denied the opportunity to call witnesses on their behalf; they were denied access to the details concerning the charges against them, and were tried in a closed court room. The Tribunal in question was reported to have the power to impose death sentences, order public executions and issue life prison terms. It was alleged by the source that the Military Tribunal has supplanted the civilian judicial process in trials involving human rights and pro-democracy activities. The source alleged further that the right to appeal has also been suppressed by the Military Tribunal.

(b) Dr. Beko Kuti, the Chairman of the Campaign for Democracy; Dr. Tunji Abayomi, the Chairman of Human Rights Africa and Chima Ubani, the Head of the Civil Liberties Organization's Human Rights Education Program were arrested without warrants and were being held incommunicado.

6. It appears from the above allegations which, it may be recalled, were not refuted by the Government despite the opportunity given to it to do so, that in the case of General Obasanjo and the other 19 persons mentioned in paragraph 5 (a) above, several articles of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, to which the Federal Republic of Nigeria is a party, relating to the right to fair trial have been violated, and that these violations are of such gravity as to confer to the deprivation of freedom an arbitrary character. Not only have these persons been produced before a military tribunal which, according to the source, failed to meet the standards of independence and impartiality, they were also denied their rights to counsel of their choice, to address the court in their defence, to call witnesses on their behalf and to have access to the details concerning the charges against them. Furthermore, they were reportedly tried in a closed court room and the right to appeal was suppressed by the Military Tribunal.

7. As regards the cases of Dr. Beko Kuti, Dr. Tunji Abayomi and Chima Ubani, their arrest without warrant and the fact that they are being held incommunicado appears to equally confer on their deprivation of freedom an arbitrary character.

8. Finally, according to the source, the above-mentioned persons were apparently convicted of charges ranging from treason to the publishing of articles critical of the Government, while by doing so they merely exercised their right to freedom of opinion and expression in the framework of their activities as defenders of democracy and human rights.

9. In the light of the above the Working Group decides:

> The detention of General Olusegun Obasanjo and 19 other persons, as well as Dr. Beko Kuti, Dr. Tunji Abayomi and Chima Ubani, is declared to be arbitrary being in contravention of articles 10, 11 and 19 of the

Universal Declaration of Human Rights, and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights, to which the Federal Republic of Nigeria is a Party, and falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group.

20. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of Nigeria to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 23 May 1996.

DECISION No. 7/1996 (ZAIRE)

Communication addressed to the Government of Zaire on 3 October 1995.

Concerning: Lieutenant-Colonel Sylvestre Ningaba, Major Déo Bugewgene and Sergeant-Major Dominique Domero, on the one hand, and the Republic of Zaire, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Zaire. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the communication, the above-mentioned persons, all three of whom are Burundian officers, were detained in Zaire in October 1993 apparently for illegal entry into the country and complicity in an assassination (whose alleged victim was President Ndadaye of Burundi). The three officers were allegedly being held pending an application for extradition by the Burundian Government in office. It has been reported that under the extradition agreement between the two countries, dated 21 June 1975, the Government with which the application is lodged may order the accused to be remanded in custody while the requesting Government formalizes the application within the specified three-month deadline. As the Government of Burundi requested extradition and remand in custody in April 1994, the deadline for formalization of the application expired in July of the same year. It was also reported that the Advocate-General of the Republic responsible for the Public Prosecutor's Office ordered the release of the persons concerned on 19 August 1994, although his decision was not carried out and the three officers continued to be held in prison, apparently without cause, since none of them had committed an offence in Zaire.

6. The facts as described above are referred to in the report of the Special Rapporteur on the situation of human rights in Zaire (E/CN.4/1995/67, paras. 195-198). According to the Special Rapporteur, the detention of the

three persons in question from April 1994 for the purpose of their extradition could not exceed three months, in conformity with the Extradition Treaty signed by Zaire and Burundi on 21 June 1975. They should thus have been released in July 1994 at the latest. This is confirmed by the fact that on 10 August 1994 the Public Prosecutor's Office decided, albeit somewhat belatedly, to order their release. Their continued detention cannot, therefore, be linked to any legal basis other than mere "reason of State", to use the words of the Special Rapporteur, and is thus arbitrary. It should, however, be recalled that, according to the Special Rapporteur, the aforementioned Sylvestre Ningaba and Dominique Domero were eventually extradited to Burundi, while Déo Bugewgene was released.

7. In the light of the above the Working Group decides:

(a) The case of Déo Bugewgene is filed under the terms of paragraph 14.1 (a) of the Working Group's revised methods of work.

(b) The detention of Sylvestre Ningaba and Dominique Domero between July 1994 and 2 September 1995, when they were handed over to the Burundian authorities, is declared to be arbitrary being manifestly no longer linked to any legal basis and falling within category I of the principles applicable in the consideration of the cases submitted to the Working Group.

Adopted on 23 May 1996.

DECISION No. 8/1996 (CUBA)

Communication addressed to the Government of the Republic of Cuba on 3 October 1995.

Concerning: Carmen Julia Arias Iglesias, on the one hand, and the Republic of Cuba, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Cuba. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Rapporteur of the Commission on Human Rights pursuant to Commission resolution 1995/56 (E/CN.4/1996/60).

6. The Working Group considers that:

(a) According to the communication, Carmen Julia Arias Iglesias is the public relations officer of a human rights organization called Luchadores por la libertád y la independencia de Cuba. She was detained on 19 April 1992 in connection with the group's activities and for possessing cassettes describing human rights violations - which motivated the charge that she had been gathering secret or confidential information - and a copy of the Universal Declaration of Human Rights. She received a sentence of nine years' imprisonment which she is currently serving in the Havana Women's Prison.

(b) The Government has not forwarded a reply in the more than seven months that have passed since the request for information was made, and has not therefore challenged any of the facts referred to by the source.

(c) The detention of Carmen Julia Arias Iglesias resulted from the exercise of the rights set forth in articles 9, 19 and 20 of the Universal Declaration of Human Rights, including the rights to freedom of assembly and association and to freedom of expression and opinion. Accordingly, under the terms of the Working Group's methods of work, the deprivation of liberty is arbitrary, falling within category II of the applicable principles.

7. In the light of the above, the Working Group decides:

The detention of Carmen Julia Arias Iglesias is declared to be arbitrary being in contravention of articles 9, 11 and 19 of the Universal Declaration of Human Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned person to be arbitrary, the Working Group requests the Government of Cuba to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights.

Adopted on 23 May 1996.

DECISION No. 9/1996 (CUBA)

Communication addressed to the Government of the Republic of Cuba on 14 August 1995.

Concerning: Orson Vila Santoyo, on the one hand, and the Republic of Cuba, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. The Working Group also notes that the source has informed the Working Group that the above-mentioned person is no longer in detention.

4. In the context of the information received and having examined the available information, the Working Group, without prejudging the nature of the detention, decides to file the case of Orson Vila Santoyo under the terms of paragraph 14.1 (a) of its methods of work.

Adopted on 23 May 1996.

DECISION No. 10/1996 (PAKISTAN)

Communication addressed to the Government of Pakistan on 7 February 1995.

Concerning: Mr. Habibullah, Mr. Khan Mohammad, Mr. Rafiq Ahmad Naeem, Mrs. Farida Rahat, Mrs. Sheikh Muhammad Aslam and Mrs. Amtullah Sallam, on the one hand, and the Islamic Republic of Pakistan, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Islamic Republic of Pakistan. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The Working Group considers that:

(a) According to the communication Mr. Habibullah, a social security officer from Shahdara town, Lahore, was reportedly arrested on 29 October 1991, after being accused of blasphemy by an opponent of the Ahmadi faith. He was charged under Section 295 C of the Pakistan Penal Code which reportedly carried the death penalty. He was reportedly denied release on bail on 25 March 1992. Mr. Khan Mohammad, President of the Ahmadi community in Dera Ghazi Khan, and Mr. Rafiq Ahmad Naeem were arrested on 5 December 1991 and charged on 30 January 1992 with offences under Sections 295 A, B and C for translating the Koran into the Surayeke language. Mrs. Farida Rahat, wife of Sheikh Muhammad Yusuf Zuhr, Mrs. Sheikh Muhammad Aslam and Amtullah Salam were among several women members of the Ahmadi community who were arrested in 1993 and charged with offences under Section 295 C.

(b) All the above-mentioned persons, in addition to 125 others, are members of the Ahmadi religious community in Pakistan who are currently under detention, accused of blasphemy under Section 295 C of the Pakistan Penal Code. The Ahmadi religion was declared in 1974 as non-Muslim, for proclaiming their faith in a prophet after Muhammad, and its followers have suffered

physical attacks and discrimination without being protected by the authorities. The Supreme Court of Pakistan reportedly declared the Ahmadi faith to be blasphemous, in keeping with Ordinance XX (under which Ahmadis are prohibited from practising or calling their faith Islam).

(c) Even though over a year has passed since the transmission of the cases by the Working Group to the Government of Pakistan, the latter has not responded to the Working Group's request for information.

(d) In these circumstances, and since the Working Group has to adopt a decision, it must do so on the basis of the allegations made by the source.

(e) The above-mentioned persons are deprived of their freedom merely for exercising their legitimate right to freedom of religion and conscience, guaranteed by article 18 of the Universal Declaration of Human Rights.

6. In the light of the above the Working Group decides:

> The detention of Mr. Habibullah, Mr. Khan Mohammad, Mr. Rafiq Ahmad Naeem, Mrs. Farida Rahat, Mrs. Sheikh Muhammad Aslam and Mrs. Amtullah Sallam, is declared to be arbitrary being in contravention of article 18 of the Universal Declaration of Human Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

7. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of Pakistan to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights.

Adopted on 23 May 1996.

DECISION No. 11/1996 (AZERBAIJAN)

Communication addressed to the Government of Azerbaijan on 3 October 1995.

Concerning: Malik Bayramov and Asgar Ahmed, on the one hand and the Azerbaijan Republic, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. The Working Group further notes that the Government concerned has informed the Group that the above-mentioned persons are no longer in detention.

4. Having examined the available information and without prejudging the nature of the detention, the Working Group decides to file the cases of Malik Bayramov and Asgar Ahmed in terms of paragraph 14.1 (a) of its revised methods of work.

Adopted on 23 May 1996.

DECISION No. 12/1996 (TURKEY)

Communication addressed to the Government of Turkey on 3 October 1995.

Concerning: Atilay Aycin, Eren Keskin and Ekber Kaya, on the one hand and the Republic of Turkey, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the case(s) in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Turkey. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government although it was given the opportunity to do so.

5. The communication submitted by the source, a summary of which was forwarded to the Government, concerned the following persons:

(a) Atilay Aycin, general president of Hava-Is trade union, was reported to have been arrested on 15 May 1995, upon his return to Turkey, at the Ataturk International Airport in Istanbul, and taken to Sagmalcilar Prison near Istanbul. He was reportedly convicted under Article 8 of the Anti-Terror Law (Law 3713) and was currently being held in Saray Prison, near Tekirdag. The source reported that Aycin was previously prosecuted in 1994 under Article 8, for spreading "separatist propaganda", in a speech he made on 8 September 1991 at a meeting organized by the Turkish Human Rights Association at the Abide-i Hurriet (Freedom Memorial) Square in Istanbul. In the course of his trial, the prosecution reportedly alleged that Aycin in his speech uttered the phrase, "we must oppose those who obstruct the struggle of the Kurdish people for independence". The judgment was said to be based on the reasoning that, since the group which was "struggling for the independence of the Kurdish people" was the Kurdish Workers' Party (PKK), consequently, Aycin's statement demonstrated support for the PKK. He was convicted and sentenced to a prison term of one year and eight months. The decision was quashed on 2 February 1995 by the Ninth Chamber of the Appeal Court, but the General Council of the Appeal Court on 3 April 1995 confirmed the sentence.

(b) Eren Keskin, a female lawyer and executive board member of TOHAV (Foundation for Legal and Social Research), and secretary of the Istanbul Human Rights Association (HRA) branch (regarding whom an urgent appeal was addressed to the Turkish authorities on 31 July 1995), was reportedly arrested without a warrant, and charged on 10 March 1995 under Article 8 of the Anti-Terror Law of spreading "separatist propaganda" following the writing of a press article in September 1994. It was alleged that Keskin was targeted solely on account of her human rights activities and had previously been the object of arrests, beatings and general ill-treatment at the hands of the police. The source reported that this time, Cowskin was sentenced to two and a half years imprisonment and was taken on 2 June 1995 to Bayrampasa prison in Istanbul to serve that sentence.

(c) Ekber Kaya, an employee of the local council and a board member of the Tunceli Human Rights Association (HRA) was reported to have been detained in Tunceli, on 23 March 1995, following an order to report to the police headquarters in Tunceli to give a statement. The source affirmed that no charges were brought against Kaya and that he remained under arbitrary detention.

6. It appears from the above allegations that the detention of the three aforementioned persons and the conviction and imprisonment of two of them, is based solely on the fact that, as non-violent members of human rights associations, they peacefully exercised their right to freedom of expression, guaranteed by article 19 of the Universal Declaration of Human Rights.

7. In the light of the above the Working Group decides:

(a) The detention of Atilay Aycin, Eren Kaskin and Egber Kaya, is declared to be arbitrary being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights, and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) To transmit the present decision to the Secretary General, in conformity with Commission on Human Rights resolution 1996/70 entitled "Cooperation with representatives of United Nations human rights bodies".

8. Consequent upon the decision of the Working Group declaring the detention of Atilay Aycin, Eren Kaskin and Egber Kaya to be arbitrary, the Working Group requests the Government of Turkey to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights.

Adopted on 23 May 1996.

DECISION No. 13/1996 (SUDAN)

Communication addressed to the Government of the Sudan on 3 October 1996.

Concerning: Tabona Idriss Habani, Alli al-Umda Abdel Majid, Abdel Rasoul al-Noun, Badal Allah Burma, Abdel Mahmoud Haj Saliah, Sanna Nuqd Allah, Dr. Abdel Nabi Alli Ahmed, Dr. Alli Hasan Taj al-Din, Abdel Mahmoud Abu, Thoab Tendila, Hussein Adum Sallama, Abdhallah Musa, Haj Musa Abd al-Rahim, Alli al-Khattib, Sulliman Khalaf Allah, Abdul Rahman al-Amin, Sa'eed Ashaiqan, Faqiri Abdhallah, Galal Dawadi, Khalbil Osman Khalbil, Mahgoub al-Zubaier, Dawad Alli Dahab, Muhir Mekki, Muatasim Siam, Hassan Hussain and Abdul Azim Abdhallah, on the one hand and the Republic of the Sudan, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of seven of the cases in question within 90 days of the transmittal of the letter by the Working Group. However, as regards the other 19 persons the Working Group notes with concern that to-till date no information has been forwarded by the Government. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of the Sudan regarding seven of the persons in question. The Working Group would also have welcomed the cooperation of the Government as regards the other 19 persons concerned. The Working Group transmitted the reply provided by the Government to the source but, to date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Rapporteur of the Commission on Human Rights, Mr. G. Bizo, pursuant to Commission resolution 1995/77.

6. According to the communication submitted by the source, a summary of which was forwarded to the Government: Since the detention, in mid-May 1996, of Mr. Sadiq al-Mahdi, leader of the Umma Party and the last elected Prime Minister of Sudan, more than one hundred suspected political opponents

were detained, allegedly without charge or trial. Fifty-five of these detainees were reported to have been transferred on 26 May 1996 from Kober Prison to the prisons of Obied, Kosti and Medani. According to the source the detentions took place in Khartoum, Kosti and Qadarif. Those detained included the following: Tebura Indris Habani (ex MP), Ali al-Omda Abdel Majid (ex MP), Abdel Rasoul al-Nour (former Governor of Kordfan), Fadal Allah Burma (former State Minister for Defence), Abdel Mahmoud Haj Salih (ex MP and former Attorney General), Sarra Muqd Allah (University Lecturer and Secretary of Women's Affairs in the Umma Party), Dr. Abdel Nabi Ali Ahmed (former Governor of Dar Fur), Dr. Ali Hasan Taj al-Din (former member of the State's Supreme Council), Abdel Mahmoud Abu (Secretary General of ASPC), Tirab Tendile (prominent member of Ansar Sect), Hussein Adum Salama (Secretary of the Umma Party Headquarters).

7. According to the reports, a new wave of detentions took place at the end of May, principally of members of the Communist Party, trade unionists, and members of the Umma Party and Ansar Sect. According to the source, at least 21 persons have been arrested in that wave of detentions, which was taking place mainly in Khartoum and Port Sudan. Those detained reportedly included the following: Abdallah Musa (trade unionist), Haj Musa Abd al-Rahim (trade unionist), Ali el-Khattib (trade unionist), Sulaiman Khalaf Allah (engineer), Abdul Rahman al-Amin (director of an insurance company), Saa'eed Ashaiqur (teacher), Faqurr Abdallah (employee of the Sudan Ports Corporation), Galal Ismail (businessman), Khalil Osman Khalil (businessman), Mahjoub al-Zubair (worker, trade unionist), Ommad Ali Dahab (director of Bohaim Hotel), Mahir Mekki (employee of the Sudan Ports Corporation, and journalist), Mustasim Siam (engineer), Hassan Hussain (merchant and football coach), Abdul Azim Abdallah (employee of the Sudan Ports Corporation).

8. It was alleged that these detentions were arbitrary because they were based solely on the political opinions of the detainees, and that none of them has been charged or tried.

9. According to the Government's reply of 10 October 1996, seven of the persons in question, Tebura Indris Habani, Ali al-Omda Abdel Majid, Fadal Allah Burma, Dr. Abdel Nabi Ali Ahmed, Abdel Mahmoud Abu, Tirab Tendile and Hussein Adum Salama, were amnestied and released on 14 August 1996. As regards the other 19 persons concerned, the Government did not provide any information.

10. It appears from the allegations as described above, which, it may be recalled, have not been refuted by the Government despite the fact that it was given an opportunity to do so, that the other above-named 19 persons were, on the one hand, arrested and then detained without charge or trial, in violation of their right to fair trial guaranteed by article 10 of the Universal Declaration of Human Rights and by articles 9.2, 9.3, 9.4, 9.5 and 14.3 (a) and (c) of the International Covenant on Civil and Political Rights, and that the non-observance of these international standards is of such gravity that it confers on the deprivation of liberty an arbitrary character. On the other hand, that these persons are being detained solely on the grounds of having freely exercised their right to freedom of opinion and expression guaranteed by article 19 of the Universal Declaration of Human Rights and by article 19 of the International Covenant on Civil and Political Rights.

11. In the light of the above the Working Group decides:

(a) Having examined the available information and without prejudging the nature of the detention, the Working Group decides to file the cases of Tebira Indris Habani, Ali al-Umda Abdel Majid, Fadal Allah Burma, Dr. Abdel Nabi Ali Ahmed, Abdel Mahmoud Abu, Tirab Tendle and Hussein Adam Salama in terms of paragraph 14.1 (a) of its revised methods of work.

(b) The detention of Abdel Rasoul al-Nour, Abdel Mahmoud Haj Salih, Sarra Mugd Allah, Dr. Ali Hasan Taj al-Din, Abdallah Musa, Haj Musa Abd al-Rahim, Ali el-Khattib, Suliman Khalaf Allah, Abdul Rahman al-Amin, Sa'eed Ashaiqir, Faqiri Abdallah, Galal Ismail, Khalil Osman Khalil, Mahjoub al-Zubair, Immad Ali Dahab, Mahir Mukki, Mustasim Siam, Hassan Hussain and Abdul Azim Abdallah, is declared to be arbitrary being in contravention of articles 10 and 19 of the Universal Declaration of Human Rights, and articles 9.2, 9.3, 9.4, 9.5, 14.3 (a) and (c) and 19 of the International Covenant on Civil and Political Rights, to which the Republic of the Sudan is a party, and falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group.

12. Consequent upon the decision of the Working Group declaring the detention of the 19 persons mentioned above in paragraph 11 (b) to be arbitrary, the Working Group requests the Government of the Sudan to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 23 May 1996.

DECISION No. 14/1996 (ISLAMIC REPUBLIC OF IRAN)

Communication addressed to the Government of the Islamic Republic of Iran on 7 February 1995.

Concerning: Ali-Akbar Saidi-Sirjani, Said Niazi Karmani and Abbas Amir-Entezam, on the one hand and the Islamic Republic of Iran, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Islamic Republic of Iran. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government although it was given the opportunity to do so.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Representative of the Commission on Human Rights, Mr. M. Copithorne, pursuant to Commission resolution 1995/68.

6. The communication submitted by the source, a summary of which was forwarded to the Government, concerned the following persons:

(a) Ali-Akbar Saidi-Sirjani, aged 63, a writer, was reportedly arrested on 14 March 1994 in Tehran by agents of the Anti-Vice Department of the Revolutionary Prosecutor's Office, and has since been held in the "special sector" of the Evin prison in Tehran. No charges have reportedly been filed against him, but the Director-General of National Security at the Iranian Ministry of Intelligence was reported to have said in an interview published in the Iranian press in April 1994 that Saidi-Sirjani had "confessed" to using drugs, making alcoholic drinks, homosexual acts, links with espionage networks and receiving money from "counter-revolutionary" circles based in the West. All these charges reportedly carry the death penalty in the Islamic Republic

of Iran. According to the source Mr. Saidi-Sirjani is well known for his public opposition to censorship, since 17 of his books were banned in 1989. Earlier on the day of his arrest, his home had been raided by police who produced a search warrant and proceeded to inspect his apartment. It was further reported that Mr. Said Niazi Karmani, a poet and publisher, was detained together with Mr. Saidi-Sirjani, and was held together with him in the "special section" of Evin. Government sources reported in June 1994 that both men would be tried in public court after completion of the charge sheets against them.

(b) Abbas Amir-Entezam, engineer, deputy-Prime Minister in the Cabinet of Dr. Mehdi Bazargan, was arrested on 19 September 1979, after he had been recalled from abroad by the Iranian Foreign Ministry. Allegedly, he was summarily tried inside the Evin prison in Tehran in December 1980. His trial allegedly lasted a few minutes and he had no access to a defence lawyer. He was charged with espionage for the United States and sentenced to life imprisonment. Although he appealed the verdict, no judicial appeal hearing took place. He was denied visits by his family for the first three and a half years of his prison term. He was kept in solitary confinement for 550 days, without access to fresh air.

7. It appears from the above allegations, which, it may be recalled, the Government of the Islamic Republic of Iran did not refute despite the opportunity given to it to do so, that the detention of Ali-Akbar Saidi-Sirjani and of Said Niazi Karmani is based solely on the grounds that, in the framework of their literary activity, they peacefully exercised their right to freedom of expression, guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. As for Abbas Amir-Entezam, he is detained since 1979 and sentenced in 1980 to life imprisonment following a trial which lasted only a few minutes, and during which he was denied the right to defend himself, the right to legal assistance and the right to appeal. This constitutes a violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9.3, 9.4 and 14 of the International Covenant on Civil and Political Rights. The denial of these rights to the defence constitutes a violation of international standards of such gravity that it confers on the deprivation of liberty an arbitrary character.

8. In the light of the above the Working Group decides:

(a) The detention of Ali-Akbar Saidi-Sirjani and of Said Niazi Karmani is declared to be arbitrary being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, to which the Islamic Republic of Iran is a party, and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) The detention of Abbas Amir-Entezam is declared to be arbitrary being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9.3, 9.4 and 14 of the International Covenant on

Civil and Political Rights, to which the Islamic Republic of Iran is a party, and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

9. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned to be arbitrary, the Working Group requests the Government of the Islamic Republic of Iran to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 23 May 1996.

DECISION No. 15/1996 (PERU)

Communication addressed to the Government of Peru on 3 October 1995.

Concerning: Walter Ledesma Rebaza and Luis Mellet, on the one hand and the Republic of Peru, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case of Walter Ledesma within 90 days of the transmittal of the letter by the Working Group.

3. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the situation of Luis Mellet Castillo. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of the alleged arbitrary detention of Luis Mellet.

4. The Working Group also notes that the Government concerned has informed the Group (and the source has confirmed) that Walter Ledesma has been released.

5. The Working Group further notes that the source has confirmed that Luis Mellet has been released.

6. In the context of the information received and having examined the available information, the Working Group is of the opinion that no special circumstances warrant consideration by the Group of the nature of the detention of Walter Ledesma and Luis Mellet.

7. The Working Group, without prejudging the nature of the detention, decides to file the cases of Walter Ledesma and Luis Mellet under the terms of paragraph 14.1 (a) of its revised methods of work.

Adopted on 23 May 1996.

DECISION No. 16/1996 (ISRAEL)

Communication addressed to the Government of Israel on 7 February 1995.

Concerning: Ghassan Attamleh, on the one hand and the State of Israel, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Israel. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government although it was given the opportunity to do so.

5. According to the communication submitted by the source, a summary of which was forwarded to the Government, Ghassan Attamleh, born on 23 September 1963, resident of Reineh, near Nazareth, was reportedly arrested on 27 November 1994 at his house by a group of about 10 people combined of General Security Services (GSS), Police officers and IDF. Following a thorough search a warrant of arrest was produced and Mr. Attamleh was taken to the HaSharon prison, near Haifa, and then transferred to Nitzan prison, near Ramla, where he is still reportedly detained. According to the source, Mr. Attamleh has not been charged with any offence. On 18 December 1994, 21 days after his arrest, he was informed that he had been placed under administrative detention for three months. It was further reported that at a hearing before a district court judge, it was stated that Attamleh was suspected of membership of a terrorist organization. On order of the judge, the submission of evidence to support the allegation was done without the presence of the detainee or his legal counsel. The source added that the administrative detention order was reviewed by the President of the Nazareth District Court, who approved the order on 10 January 1995. An appeal to the Supreme Court was submitted by Mr. Attamleh's lawyer, but has reportedly not yet been considered. According to the source, if the authorities had substantial evidence that Mr. Attamleh had committed criminal offences, they should charge him and bring him to trial. The use of

administrative detention in this case allegedly aimed at denying Mr. Attamleh the guarantees contained in article 14 (3) of the International Covenant on Civil and Political Rights, to which Israel is a party.

6. It appears from the above allegations that the detention of Ghassan Attamleh during 21 days following his arrest and during the following three-month term of administrative detention, was approved by a judge. The Working Group further notes that since January 1995, date of the transmission of the case by the source, the Working Group has not received any further information concerning the case.

7. In the light of the above the Working Group decides:

The case of Ghassan Attamleh is maintained pending for further information, in keeping with paragraph 14.1 (c) of the revised methods of work of the Working Group.

Adopted on 23 May 1996.

DECISION No. 17/1996 (ISRAEL)

Communication addressed to the Government of Israel on 14 August 1995.

Concerning: Wissam Rafeedie and Majid Isma'il Al-Talahmeh, on the one hand and the State of Israel, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Israel. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government although it was given the opportunity to do so.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Rapporteur of the Commission on Human Rights, Mr. H. Halinen, pursuant to Commission resolution 1993/2 A.

6. The communication submitted by the source, a summary of which was forwarded to the Government, concerned the following persons:

(a) Wissan Rafeedie, aged 36, journalist, resident of El Bireh in the West Bank, was reportedly arrested without a warrant, at his home, on 11 August 1994 by several IDF soldiers and GSS agents, and placed under a five-months administrative detention order. On 19 December 1994 the administrative detention was extended for six months, until 8 July 1995 and has recently again been extended until November 1995. According to the source, Rafeedie had been previously sentenced to 34 months' imprisonment for running a publishing house for the Popular Front for the Liberation of Palestine (PFLP), and was released in June 1994. The source affirmed that although Rafeedie was an opponent of the current peace process between Israel and the PLO, he has never engaged in any violent activity.

(b) Majid Isma'il Al-Talahmeh, aged 27, resident of Dhahiriya, Hebron district, a student at Birzeit University. He was reportedly arrested by the IDF on 29 October 1994 at a military checkpoint north of Ramallah, without a warrant, and was placed under a six-months administrative detention order. On 27 April 1995 the detention order has been extended by another six months. No charges have been brought against him and the reasons for his arrest were not known.

7. The sources alleged that detention under an administrative detention order was arbitrary for the following reasons: (a) no judicial or other procedures existed to challenge the legality of the arrest or detention; (b) even though there was an appeals committee consisting of a military judge who was a qualified lawyer, the relevant rules of evidence and procedure made it extremely difficult to effectively challenge an order of administrative detention. In particular, the appeals were always held in camera; the committee examined evidence in the absence of the detainee and his lawyer and it did not disclose the evidence to them if it was satisfied that such disclosure could endanger State security or public safety.

8. It appears from the above allegations, which, it may be recalled, the Government of Israel did not refute despite the opportunity given to it to do so, that Wissam Rafeedie and Majid Isma'il Al-Talahmeh, irrespective of the nature and motives of the accusations against them, are being denied their right to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention. They are also denied their right to be tried without undue delay. These rights are guaranteed by articles 10 and 11.1 of the Universal Declaration of Human Rights and by articles 9.4 and 14.3 (c) of the International Covenant on Civil and Political Rights, to which the State of Israel is a party. The absence of an effective possibility to appeal against the administrative detention order, and the excessive duration of the detention - over 21 months in the case of Wissam Rafeedie and 19 months in the case of Majid Isma'il Al-Talahmeh - constitute a violation of the right to fair trial of such gravity that they confer on the deprivation of liberty an arbitrary character.

9. In the light of the above the Working Group decides:

> The detention of Wissam Rafeedie and Majid Isma'il Al-Talahmeh is declared to be arbitrary being in contravention of articles 10 and 11.1 of the Universal Declaration of Human Rights, and articles 9.4 and 14.3 (c) of the International Covenant on Civil and Political Rights, to which the State of Israel is a party, and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

10. Consequent upon the decision of the Working Group declaring the detention of Wissam Rafeedie and Majid Isma'il Al-Talahmeh to be arbitrary, the Working Group requests the Government of Israel to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 23 May 1996.

DECISION No. 18/1996 (ISRAEL)

Communication addressed to the Government of Israel on 3 October 1995.

Concerning: Ali Abd-al-Rahman Mahmoud Jaradat, Muhammad Abd-al-Halim Muhammad Rajoub and Abdel Raziq Yassin Farraj, on the one hand and the State of Israel, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Israel. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government although it was given the opportunity to do so.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Rapporteur of the Commission on Human Rights, Mr. H. Halinen, pursuant to Commission resolution 1993/2 A.

6. The communication submitted by the source, a summary of which was forwarded to the Government, concerned the following persons:

(a) Ali Abd-al-Rahman Mahmoud Jaradat, a 40-year-old researcher, resident of the Ramallah district in the West Bank, was reportedly arrested at his home on 10 August 1994 by the IDF and the GSS without a warrant. Jaradat was first detained in Ramallah prison, then transferred to al-Fara'a Military Detention Centre where he reportedly spent two weeks in an isolation cell, and moved again to Ketziot Military Detention Centre. It was alleged by the source that Mr. Jaradat has not been charged of any crime. Reportedly, he has been placed under administrative detention for six months, a period which was later renewed by another six-month detention order.

(b) Muhammad Abd-al-Halim Muhammad Rajoub, a 35-year-old mechanical engineer, resident of the Hebron district of the West Bank. Rajoub was allegedly arrested on 30 May 1994 at a military checkpoint on the road between Hebron and Idna in the southern part of the West Bank while he was travelling to work. The arrest was reportedly carried out by the IDF without a warrant. According to the source Rajoub has been the subject of three consecutive six-month administrative detentions. It has been alleged further that Rajoub appealed against the imposition of each of the administrative detention orders before a military judge who rejected his appeals on the basis that the Israeli authorities were in possession of evidence which supported his detention. The source also claimed that neither Rajoub nor his lawyer have had access to the evidence in question.

(c) Abdel Raziq Yassin Farraj, a student at Birzeit University, aged 31, resident of the Jalazun Refugee Camp in the Ramallah district. The source alleged that IDF and GSS soldiers arrived at Farraj's home on 29 May 1994 at approximately midnight, forced their way into the house, carried out a search and arrested Farraj at his home. It has been reported that Faraj was detained at the Ramallah prison for one night and was thereafter taken to al-Fara'a Military Detention Centre to await a further transfer to Ketsiot Military Detention Centre in the Negev (southern Israel). The source affirmed that a six-month administrative detention order was issued against Farraj on 30 May 1994. The detention order which stated that Rajad was being detained because he was an activist in the Popular Front was renewed on 28 November 1994, and was followed by a third consecutive detention order on 27 May 1995. It was also alleged that the authorities who conducted the search and the arrest did not show a warrant nor an administrative detention order, nor did they state any reason for the search or the arrest. The source also reported that Faraj was not afforded the opportunity to be presented before a judge, nor any other magistrate until the time of the appeal of his first detention order, when he was presented before a judge.

7. On 18 August 1995 the source informed the Working Group that Abdel Raziq Yassin Farraj has been released.

8. It appears from the above allegations, which, it may be recalled, the Government of Israel did not refute despite the opportunity given to it to do so, that Ali Abd-al-Rahman Mahmoud Jaradat and Muhammad Abd-al-Halim Muhammad Rajoub, irrespective of the nature and motives of the accusations against them, are being denied their fundamental right to fair trial; in particular, they are being denied the right to be informed of the reasons for their arrest, the right to be brought promptly before a judge and to be entitled to trial within a reasonable time or to release and the right to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention. These rights are guaranteed by articles 10 and 11.1 of the Universal Declaration of Human Rights and by articles 9.2, 9.3, 9.4 and 14.3 (a) of the International Covenant on Civil and Political Rights, to which the State of Israel is a party. The absence of an effective possibility to appeal against the administrative detention order, and the excessive duration of the detention - over 21 months in the case of Ali Abd-al-Rahman Mahmoud Jaradat and two years in the case of Muhammad Abd-al-Halim Muhammad Rajoub - constitute a violation of the right to

fair trial of such gravity that they confer on the deprivation of liberty an arbitrary character. It further appears from the above that Abdel Raziq Yassin Farraj is no longer in detention.

9. In the light of the above the Working Group decides:

(a) Having examined the available information and without prejudging the nature of the detention, the Working Group decides to file the case of Abdel Raziq Yassin Farraj in terms of paragraph 14.1 (a) of its revised methods of work.

(b) The detention of Ali Abd-al-Rahman Mahmoud Jaradat and Muhammad Abd-al-Halim Muhammad Rajoub is declared to be arbitrary being in contravention of articles 10 and 11.1 of the Universal Declaration of Human Rights, and articles 9.2, 9.3, 9.4 and 14.3 (a) of the International Covenant on Civil and Political Rights, to which the State of Israel is a party, and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

10. Consequent upon the decision of the Working Group declaring the detention of Ali Abd-al-Rahman Mahmoud Jaradat and Muhammad Abd-al-Halim Muhammad Rajoub to be arbitrary, the Working Group requests the Government of Israel to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 23 May 1996.

DECISION No. 19/1996 (PEOPLE'S REPUBLIC OF CHINA)

Communication addressed to the Government of the People's Republic of China on 28 August 1996.

Concerning: Jiang Qisheng, Wang Zhonggiu, Zhang Lin and Bao Ge, on the one hand and the People's Republic of China, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 35/1996.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of the People's Republic of China. The Working Group transmitted the reply provided by the Government to the source but, to date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. The communication submitted by the source, a summary of which was forwarded to the Government, concerned the following persons:

(a) Jiang Qisheng, 46-year-old, aeronautics graduate, was reportedly arrested in Beijing on 28 May 1994, a day after giving an interview to the British newspaper "The Sunday Times". According to the source, Jiang Qisheng worked as an interpreter for an interview of Ding Zilin, a philosophy professor, whose son was killed in Beijing on 4 June 1989 during the military crackdown on the 1989 pro-democracy protests. Jiang Qisheng had allegedly told the newspaper that he knew he was putting himself at risk for his association with Ding Zilin, who was under police surveillance. According to the source, Jiang Qisheng's wife, Mrs. Chen Hong, said she only found out that her husband had been arrested when she phoned the police to report him missing; when she went to the police station where he was held, she was not allowed to see him and was not told why he was being held. Jiang Qisheng was allegedly first arrested in June 1989 and detained for 18 months for his involvement in the 1989 pro-democracy protests when he was a member of the People's University Student's Autonomous Federation.

(b) Wang Zhonggiu, a postgraduate law student from Beijing University, was reportedly arrested at the end of May 1994 in Beijing in the days leading up to the fifth anniversary of Tiananmen. According to the source, Wang Zhonggiu was one of the organizers of a recently formed independent

labour rights group, the League for the Protection of the Rights of the Working People, whose registration had been refused by the Beijing authorities in March.

(c) Zhang Lin, a former pro-democracy activist who had been detained in 1989, was reportedly arrested on 2 June 1994 in Beijing also in the days leading up to the fifth anniversary of Tiananmen. According to the source, he has been sent back to his home town in Anhui province. No reasons for his arrest and current status were given.

(d) Bao Ge, a leading dissident, was reportedly arrested on 3 June 1994 in Shanghai. According to the source Bao Ge was arrested after sending an open letter to the Chinese Government asking for a national human rights organization to be set up. The organization reportedly planned to investigate issues such as free labour unions, freedom of religion and the protection of the rights of women and children.

6. The Government, in its reply, gave the following information:

(a) As regards Jiang Qisheng, the public security organs abandoned their investigation of Jiang on 29 June 1994.

(b) As regards Wang Zhongqiu, the public security authorities abandoned their watch on Wang's home on 17 September 1994. The Government did not react, in its reply, to the allegations that the two above-mentioned persons had been detained.

(c) As regards Zhang Lin, the Government refers to an earlier communication, dated October 1994, by which it had already informed the Working Group of the situation of that person. That communication, dated 17 October 1994, was a reply to an urgent appeal sent by the Working Group on behalf of Zhang Lin, who had allegedly gone on hunger strike while in detention. The Government reported that Zhang Lin had been sentenced to two years' imprisonment in 1989 for sedition. In 1991 he was released. His present imprisonment had nothing to do with the punishment referred to above. Since 1988 he engaged in promiscuous sexual relations with many young women, by using menaces and deceit, behaving in a criminally indecent manner and perturbing normal social order. On 19 August 1994, the Bengbu Municipal Re-education through Labour Committee in Anhui decided to assign him to three years' re-education through labour. On 29 August 1994, Zhang Lin signed his re-education through labour order. The Government did not react to the allegations that Zhang Lin was arrested on 2 June 1994 in Beijing also in connection with the fifth anniversary of Tiananmen.

(d) As regards Bao Ge, the Government, which did not react to the allegations concerning that person, affirmed that Bao Ge was involved in fomenting disturbances and other activities seriously disruptive of public order and security. The Shanghai Municipal Re-education through Labour Committee assigned him on 19 September 1994 to three years' re-education through labour in accordance with articles 10.4 and 13 of the Provisional Procedures governing Re-education through Labour.

7. It appears from the above that:

(a) The Working Group does not have sufficient information at its disposal in order to take a decision on the alleged detention of Jiang Qisheng and Wang Zhongqiu.

(b) Zhang Lin, irrespective of the nature and motives of the accusations against him, is being denied his right to have his cause examined in full equality before an independent and impartial court, in order that that court may determine any criminal charges brought against him. The absence of such legal proceedings constitutes a violation of the right to fair trial of such gravity that it confers on the deprivation of liberty an arbitrary character.

(c) The detention of Bao Ge is motivated by the fact that he peacefully exercised his right to freedom of expression by, inter alia, sending an open letter to the Chinese authorities asking that a national human rights organization be set up. This constitutes a violation of his rights to freedom of expression and to freedom of peaceful assembly and association, guaranteed by articles 19 and 20, respectively, of the Universal Declaration of Human Rights. Furthermore, Bao Ge is being denied his right to have his cause examined in full equality before an independent and impartial court, in order that that court may determine any criminal charges brought against him. The absence of such legal proceedings constitutes a violation of the right to fair trial of such gravity that it confers on the deprivation of liberty an arbitrary character.

8. In the light of the above the Working Group decides:

(a) The cases of Jiang Qisheng and Wang Zhongqiu are maintained pending for further information, in keeping with paragraph 14.1 (c) of the revised methods of work of the Working Group.

(b) The detention of Zhang Lin is declared to be arbitrary being in contravention of articles 10 and 11.1 of the Universal Declaration of Human Rights and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

(c) The detention of Bao Ge is declared to be arbitrary being in contravention of articles 10, 11.1, 19 and 20 of the Universal Declaration of Human Rights and falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group.

9. Consequent upon the decision of the Working Group declaring the detention of Zhang Lin and Bao Ge to be arbitrary, the Working Group requests the Government of the People's Republic of China to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights.

Adopted on 23 May 1996.

DECISION No. 20/1996 (ALBANIA)

Communication addressed to the Government of Albania on 4 March 1996.

Concerning: Sulejman Rrahman Mekollari, Dilaver Ibrahim Dauti, Liriam Servet Veliu and Gani Korro, on the one hand, and the Republic of Albania, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Albania. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government although it was given the opportunity to do so.

5. The communication received from the source concerned the following persons: Sulejman Rrahman Mekollari, Dilaver Ibrahim Dauti, Liriam Servet Veliu and Gani Korro, all members of the Albanian Socialist Party and sympathizers of the former communist regime. According to the source, the four persons in question were arrested for having distributed pamphlets on 10 September 1995 in the district of Saranda. The pamphlets, which according to the source bore the slogan "Down with the United States", were described by the authorities as anti-American, anti-national and anti-constitutional. The above-mentioned four persons were to be tried by the Saranda district court under article 225 of the Penal Code on the charge of "distributing anti-constitutional publications", an offence which carries a three-year prison sentence. The source states that the pamphlets in question did not advocate violence and that the detention, charges against and trial of the above-mentioned four persons for having distributed such pamphlets are consequently a violation of the international provisions guaranteeing the right to freedom of expression and opinion.

6. In a subsequent communication, the source indicated that Sulejman Rrahman Mekollari, Dilaver Ibrahim Dauti, Liriam Servet Veliu and Gani Korro were tried on 17 March 1995 by the Saranda district court. They were all found guilty of anti-constitutional activity and sentenced as follows:

Sulejman Rrahman Mekollari to four years' imprisonment, Dilaver Ibrahim Dauti to two and half years' imprisonment, Liriam Servet Veliu to two years' imprisonment and Gani Korro to three years' imprisonment, 18 months of which were suspended. The verdict was confirmed by the Court of Appeal. According to the source, Sulejman Rrahman Mekollari and Liriam Servet Veliu are still in prison, Gani Korro has been released and Dilaver Ibrahim Dauti has escaped.

7. It follows from the above that the allegations that the above-mentioned four persons were detained for having distributed pamphlets have not been challenged. By distributing pamphlets in a non-violent manner they were merely engaging in the free exercise of their right to freedom of opinion and expression, guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, to which the Republic of Albania is a party.

8. In the light of the above, the Working Group decides:

> The detention of Sulejman Rrahman Mekollari, Dilaver Ibrahim Dauti (notwithstanding his escape), Liriam Servet Veliu and Gani Korro (notwithstanding his release) is declared to be arbitrary being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, to which the Republic of Albania is a party, and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

9. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned four persons to be arbitrary, the Working Group requests the Government of Albania to take the necessary measures to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 16 September 1996.

DECISION No. 21/1996 (BAHRAIN)

Communication addressed to the Government of the State of Bahrain on 20 February 1996.

Concerning: Hassan Ali Fadhel, Issa Saleh Issa and Ahmad Abdulla Fadhel, on the one hand and the State of Bahrain, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group takes note of the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of the State of Bahrain. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. According to the communication submitted by the source, a summary of which was forwarded to the Government, scores of minors, including Hassan Ali Fadhel and Issa Saleh Issa, both aged 12, and Ahmad Abdulla Fadhel, aged 13; all three pupils from Jedhafs, were reported to have been arrested in November 1995. The three above-mentioned were reportedly arrested on 15 November. The source added that 200 pupils were arrested on 28 November 1995 at Al-Jabria secondary school, following their protest of the death sentence allegedly pronounced against the 27-year-old prisoner Issa Qambar. It was further reported that the pupils were taken by the police in five buses to an unknown place. The source alleged that scores of citizens, including children between 12-16 years of age were arbitrarily detained during the month of November. The authorities have allegedly refused to reveal the names and the whereabouts of the detainees who were allegedly also denied access to their families.

6. The Government in its reply dated 21 May 1996 categorically refuted the allegation by the source which it described as a "recognisable product of terrorist propaganda which should be viewed against the background of the continuing unrest in Bahrain and therefore treated with extreme caution".

7. As to the facts alleged, the Government says, in reference to the three children allegedly detained on 15 November 1995, that no one was detained arbitrarily. All the persons arrested in November 1995 following violent disturbances were either released or tried by tribunals in keeping with the law.

8. The Working Group regrets to note that the Government's reply does not make it possible to ascertain what persons were tried and who was released. No details are given as to the legal situation of those who were tried and the charges brought against them. Nor does the Government inform the Group about the sentences meted out to those convicted. Furthermore, the Government does not deny that among those arrested and detained there were children.

9. The source in its observations to the Government's reply challenges the Government's affirmation that all those arrested in November 1995 in relation to the unrest were either tried or released. The source claims that it has documented many cases of people held for more than one year without being charged or tried, apparently under administrative detention. The Bahraini Information Minister admitted in February 1996, according to the source, that about 200 of those arrested in 1994-1995 were "still under interrogation". The Decree Law of State Security Measures of October 1974 permitted administrative detention at the discretion of the Minister of Interior for renewable periods of three years. In addition, although the law allowed for a petition to the Attorney General challenging the detention every three months, lawyers have told the source that many of those arrested since November 1995 were held without an official order and thus could be detained for months without any possibility of review.

10. It appears from the facts as described above that the detention since 15 November 1995 of the three aforementioned children is solely motivated by the fact that they protested against the death sentence pronounced against Issa Qambar. There is nothing to indicate that by doing so they had resorted or incited to violence. Their detention is therefore motivated by activities which they had exercised in their right to freedom of opinion and expression, as well as their right to freedom of peaceful assembly, rights which are guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights.

11. In the light of the above the Working Group decides:

(a) The detention of Hassan Ali Fadhel, Issa Saleh Issa and Ahmad Abdulla Fadhel is declared to be arbitrary being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) To transmit the present decision to the Committee established by the United Nations to monitor the implementation of the Convention on the Rights of the Child, to which the State of Bahrain is a party.

12. Consequent upon the decision of the Working Group declaring the detention of the three above-mentioned children to be arbitrary, the Working Group requests the Government of the State of Bahrain to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights.

Adopted on 17 September 1996.

DECISION No. 22/1996 (BAHRAIN)

Communication addressed to the Government of the State of Bahrain on 20 February 1996.

Concerning: Sadeq Abdulla Ebrahim, Jaffar Ahmad Yaquob, Abbas Jawad Sarhan, Abdul-Hamid J. Sarhan, Abbas Ali Saleh, Abbas Abdulla Sarhan, Habid Hussain Yousif, Ali Abdulla Mattar, Issa A. Hassan Mattar, Majeb Ebrahim Radhi, and Abdulla Habid Mattar, on the one hand and the State of Bahrain, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group takes note of the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of the State of Bahrain. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. According to the communication submitted by the source, a summary of which was forwarded to the Government, the following students were reportedly arrested on 30 October 1995 in Maamir: Sadeq Abdulla Ebrahim, aged 14; Jaffar Ahmad Yaquob, aged 15; Abbas Jawad Sarhan, aged 15; Jamil A. Hassan Mattar, aged 15; Abdul-Hamid J. Sarhan, aged 15; Abbas Ali Saleh, aged 15; Abbas Abdulla Sarhan, aged 16; Habid Hussain Yousif, aged 17; Ali Abdulla Mattar, aged 18; and Issa A. Hassan Mattar, aged 21. Majeb Ebrahim Radhi, aged 23, a carpenter and Abdulla Habid Mattar, aged 27, a farmer, were also reported to have been arrested in Maamir on the same date. The arrest on 30 October of the above-named persons was reportedly connected with a hunger strike staged in protest against the Government by a member of the dissolved Parliament and six former detainees. It has been reported that during the hunger strike, thousands of people had gathered to show their support to the strikers and that although no acts of violence were reported, many citizens, among them children, were allegedly detained.

6. The Government in its reply dated 21 May 1996 categorically refuted the allegation by the source which it described as a "recognisable product of terrorist propaganda which should be viewed against the background of the continuing unrest in Bahrain and therefore treated with extreme caution".

7. As to the facts alleged, the Government says, in reference to the children and the youths allegedly detained on 30 October 1995, that no one was detained arbitrarily. All the persons arrested in 1995 following violent disturbances were either released or tried by tribunals in keeping with the law.

8. The Working Group regrets to note that the Government's reply does not make it possible to verify the names of persons who were reportedly tried or released. No details are given as to the number of persons in each category, the legal situation of those who were tried and the charges brought against them. Nor does the Government inform the Group about the sentences meted out to those convicted. Furthermore, the Government does not deny that among those arrested and detained there were children, as may be seen in the above list which includes a child aged 14 and five children aged 15.

9. The source in its observations to the Government's reply challenges the Government's affirmation that all those arrested in November 1995 in relation to the unrest were either tried or released. The source claims that it has documented many cases of people held for more than one year without being charged or tried, apparently under administrative detention. The Bahraini Information Minister admitted in February 1996, according to the source, that about 200 of those arrested in 1994-95 were "still under interrogation". The Decree Law of State Security Measures of October 1974 permitted administrative detention at the discretion of the Minister of Interior for renewable periods of three years. In addition, although the law allowed for a petition to the Attorney General challenging the detention every three months, lawyers have told the source that many of those arrested since November 1995 were held without an official order and thus could be detained for months without any possibility of review.

10. It appears from the facts as described above that the detention since 30 October 1995 of the aforementioned eight children and four youths solely motivated by the fact that they protested in support of a hunger strike undertaken by a member of the dissolved Parliament and six former detainees. There is nothing to indicate that by doing so they had resorted or incited to violence. Their detention is therefore motivated by activities which they had exercised in their right to freedom of opinion and expression, as well as their right to freedom of peaceful assembly, rights which are guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights.

11. In the light of the above the Working Group decides:

(a) The detention of Sadeq Abdulla Ebrahim, Jaffar Ahmad Yaquob, Abbas Jawad Sarhan, Abdul-Hamid J. Sarhan, Abbas Ali Saleh, Abbas Abdulla Sarhan, Habid Hussain Yousif, Ali Abdulla Mattar, Issa A. Hassan Mattar, Majeb Ebrahim Radhi, and Abdulla Habid Mattar is declared to be arbitrary being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) To transmit the present decision to the Committee established by the United Nations to monitor the implementation of the Convention on the Rights of the Child, to which the State of Bahrain is a party.

12. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned children and youths to be arbitrary, the Working Group requests the Government of the State of Bahrain to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights.

Adopted on 17 September 1996.

DECISION No. 23/1996 (BAHRAIN)

Communication addressed to the Government of the State of Bahrain on 20 February 1996.

Concerning: Shaikh Abd al-Amir Mansour al-Jamri, Shaikh Hassan Sultan, Shaikh Hussein el-Deihi, Shaikh Ali bin Ahmed al-Jeddhafsi, Shaikh Ali Ashour, Sayyed Ibrahim Adnan al-Alawi, Hassan Meshma'a, Salah Abdallah Ahmed al-Khawaja and Abdel Wahab Hussein, on the one hand and the State of Bahrain, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group takes note of the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of the State of Bahrain. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. According to the communication submitted by the source, a summary of which was forwarded to the Government, scores of people were arrested by security forces since the beginning of January 1996. The arrests were reportedly made in connection with peaceful demonstrations protesting the continued detention of some 500 persons arrested during unrests in December 1994 to April 1995, or following clashes with security forces in the wake of the bomb explosions which occurred in Manama during the first two weeks of January, and the closure of some mosques during the same month. The arrests were made between 21 and 22 January 1996. The majority of the detainees were said to be held incommunicado and to include prominent Muslim clerics such as Shaikh Abd al-Amir Mansour al-Jamri and Shaikh Hassan Sultan in addition to the following persons: Shaikh Hussein el-Deihi, Shaikh Ali bin Ahmed al-Jeddhafsi, Shaikh Ali Ashour, Sayyed Ibrahim Adnan al-Alawi, Hassan Meshma'a, Salah Abdallah Ahmed al-Khawaja and Abdel Wahab Hussein.

6. The Government in its reply dated 21 May 1996 categorically refuted the allegation by the source which it described as a "recognisable product of terrorist propaganda which should be viewed against the background of the continuing unrest in Bahrain and therefore treated with extreme caution".

7. As to the facts alleged, the Government says, in reference to the persons arrested in January 1996 that no one was detained arbitrarily. "Many have been released and those still in custody are held strictly according to the law for their violence-related activities contrary to

specific provisions of the 1976 Penal Code. Their trials or release will be determined by due process of law and in the meantime they are well treated, their conditions are humane and they are afforded all their rights of visitation, representation, welfare and medicare strictly according to the law".

8. The Working Group regrets to note that the Government's reply does not provide specific information on the list of persons who were allegedly detained. No details are given as to the legal situation of those who are still in custody and the charges brought against them. Nor does the Government inform the Group as to whether any of the persons figuring on the above list have been released.

9. The source in its observations to the Government's reply indicates the following: "The first eight men mentioned above have been held in incommunicado detention since their arrest on 22 January 1996. Lawyers and relatives confirmed in July 1996 that they did not know where the men were being held, that they have been unable to visit or contact them. Neither lawyers nor families got any response from the Interior Ministry when they requested visitation permits and information on their whereabouts. This contradicts the Government's claim that the detainees are afforded visitation rights. The above-mentioned detainees' state of health also remains unknown, although there have been reports that a number of them were moved temporarily to the Military Hospital for unknown reasons ... . In addition, the detainees have not been granted their right to challenge their detention, according to lawyers assigned by the men's families to follow their cases ...".

10. It appears from the facts as described above that the nine above-mentioned persons were arrested on 22 January 1996 and have since that date been detained without charge or trial. The failure to bring charges against them and put them on trial for such a long period constitutes a violation of the rights guaranteed by article 9 of the Universal Declaration of Human Rights and by principles 11, 12 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The non-observance of the above-mentioned provisions relating to the right to fair trial is such that it confers on the detention an arbitrary character.

11. In the light of the above the Working Group decides:

The detention of Shaikh Abd al-Amir Mansour al-Jamri, Shaikh Hassan Sultan, Shaikh Hussein el-Deihi, Shaikh Ali bin Ahmed al-Jeddhafsi, Shaikh Ali Ashour, Sayyed Ibrahim Adnan al-Alawi, Hassan Meshma'a, Salah Abdallah Ahmed al-Khawaja and Abdel Wahab Hussein is declared to be arbitrary being in contravention of article 9 of the Universal Declaration of Human Rights and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

12. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of the State of Bahrain to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights.

Adopted on 17 September 1996.

DECISION No. 24/1996 (ISRAEL)

Communication addressed to the Government of Israel on 20 February 1996.

Concerning: Othman Irsan al-Qadi Abdul-Mahdi, on the one hand and the State of Israel, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect (of each of the cases) of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Israel. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government although it was given the opportunity to do so.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Rapporteur of the Commission on Human Rights, Mr. H. Halinen, pursuant to Commission resolution 1993/2 A.

6. The communication submitted by the source, a summary of which was forwarded to the Government, concerned Othman Irsan al-Qadi Abdul-Mahdi, aged 28, a Palestinian sociology student at Birzeit University. Mr. Abdul-Mahdi was reportedly arrested at his home in Beit Liqya, on 12 March 1995, by Israeli soldiers and undercover agents. Following his arrest, Mr. Abdul-Mahdi was issued a six-month administrative detention order for the period 28 February-30 August 1995. He was first detained at Ramallah prison, then transferred to al-Fara'a military detention centre and again transferred to the Ketsiot military detention centre in the Negev, in southern Israel. At the termination of the first six-month order in August 1995, a second six-month administrative detention order (7 September 1995-6 March 1996) was issued against Mr. Abdul-Mahdi, at which time he was transferred to the Meggido prison in Israel where he was held at the time the communication was received. He has not been charged with any offence. The source feared that the second administrative detention order could be once again renewed since the Military order legislation authorizes a

Military Commander to issue an order of administrative detention for a period of up to 12 months, and permits their renewal for indefinite lengths of time. Mr. Abdul-Mahdi was, at the time the communication was received, appealing against the second administrative detention order to an appeals committee consisting of a military judge who is a qualified lawyer, but according to the source, the relevant rules of evidence and procedure made it extremely difficult to effectively challenge orders of administrative detention. Furthermore, the appeals are always held in camera, the committee examines evidence in the absence of the detainee and his lawyer and it does not disclose the evidence to them if it is satisfied that such disclosure could endanger State security or public safety.

7. It appears from the facts as described above that Othman Irsan al-Qadi Abdul-Mahdi, irrespective of the nature and the motives of the accusations against him, has been denied his right to a fair trial, and in particular of the rights that any person deprived of his freedom must have, to be promptly informed of the reasons for his arrest and of any charges against him, to be brought promptly before a judge or other judicial authority, to take proceedings before a court so that the latter may decide on the lawfulness of his detention, and the right to be tried within a reasonable time or be released. These rights are guaranteed by articles 10 and 11.1 of the Universal Declaration of Human Rights and by articles 9.2, 9.3, 9.4 and 14.3 (a), (c) and (d) of the International Covenant on Civil and Political Rights to which Israel is a party. As regards administrative detention, it appears that the authority given to the Executive power, by law, to place a person in an administrative detention for a six-month period which may be renewed indefinitely, constitutes in itself an abuse of power conferring on the detention an arbitrary character. The possibility given to the detained person to appeal against this measure cannot attenuate its arbitrary character, since the appeals are heard by a military judge sitting in camera, who examines evidence in the absence of the detainee or his lawyer. This constitutes a violation of the right to a fair trial of such gravity that it confers on the detention, once again, an arbitrary character.

8. In the light of the above the Working Group decides:

> The detention of Othman Irsan al-Qadi Abdul-Mahdi is declared to be arbitrary being in contravention of articles 10 and 11.1 of the Universal Declaration of Human Rights and articles 9.2, 9.3, 9.4 and 14.3 (a), (c) and (d) of the International Covenant on Civil and Political Rights to which the State of Israel is a party and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

9. Consequent upon the decision of the Working Group declaring the detention of Othman Irsan al-Qadi Abdul-Mahdi to be arbitrary, the Working Group requests the Government of Israel to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 17 September 1996.

DECISION No. 25/1996 (REPUBLIC OF KOREA)

Communication addressed to the Government of the Republic of Korea on 5 March 1996.

Concerning: Kwon Young-Kil and Yang Kyu-hun, on the one hand and the Republic of Korea, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of the Republic of Korea. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made, the response of the Government thereto and the comments by the source.

5. The communication submitted by the source, a summary of which was forwarded to the Government, concerned the following persons:

(a) Kwon Young-kil, President of *Minju Nochong* (Korean Federation of Trade Unions, KCTU), who was reportedly arrested on 23 November 1995 and was allegedly charged on 16 December of the same year with "third party intervention" in labour disputes. These charges reportedly related to the contents of speeches he made at a series of rallies in May and June 1994 in which he advised workers about industrial action, expressed support for workers and criticized government policy. It was reported that the prohibition on "third party intervention" is contained in article 13-2 of the Labour Dispute Mediation Act which prohibits a "third person", that is anyone who has no immediate connection with a workplace where a dispute is taking place, from intervening in the dispute. The authorities allegedly regard as "third party intervention", advice given to trade union members on their rights, and the conduct of industrial disputes. Three additional minor charges were reportedly brought against Kwon Young-kil in regard to two demonstrations organized by the KCTU in November 1994. These charges included interference with traffic flow, raising funds for the KCTU without government permission and his connection with the violence which erupted during both rallies. The source argued that there was no evidence that Kwon Young-kil had used or advocated violence.

(b) Yang Kyu-hun, Vice-President of the KCTU, was reportedly arrested on 1 February 1996 after having been in hiding since June 1994, when warrants were issued for his arrest and that of Kwon Young-kil on charges of "third party intervention" in labour disputes. It was alleged that under the Republic of Korea's legislation, Yang Kyu-hun may be questioned by police and prosecution authorities for up to 30 days.

(c) The source further noted that in March 1993, the International Labour Organization (ILO) Committee on Freedom of Association had called on the Republic of Korea to lift the ban on "third party intervention", and that in July 1995, the United Nations Human Rights Committee had found that a trade-unionist, named Sohn Jong-kyu, sentenced to 18 months of imprisonment for "third party intervention" in a labour dispute, had been convicted for exercising his right to freedom of expression.

6. In its reply dated 30 May 1996, the Government provides a detailed account of the pertinent legislation in force and the circumstances in which the law was allegedly violated by the two trade-unionists concerned. It also informs the Working Group of the release, on 13 March 1996, of Kwon Young-kil. As regards the legal basis for detention the Government mentions the following charges:

(a) An unauthorized third party intervention in illegal acts of dispute, under articles 12 and 13 of the Labour Dispute Adjustment Act. Article 12 prohibits acts of dispute by public servants. Messrs. Kwon and Yang violated this article by instigating railway workers, who were public servants, to go on illegal strikes in June 1994. They also violated article 13 of the same act, which prohibits unauthorized intervention by a third party in acts of dispute, twice in June 1994. Mr. Yang instigated workers of two companies to go on illegal strikes on four occasions in June and July 1994.

(b) An obstruction of general traffic flow, by marching with 10,000 workers and students and participating in sit-ins, on 12 November 1995, thus violating article 185 of the Criminal Law.

(c) Intrusion into private premises during marches in Kyunghee University campus on 12 November 1994 and in Yonsei University campus on 11 November 1995, in violation of article 319, paragraph 1, of the Criminal Law.

(d) An illegal collection of contributions, carried out by Mr. Kwon in October 1995 in violation of article 3 of the Law on Prohibiting Collection of Contribution in Cash or in Kind.

7. The Government explains the prohibition of third party intervention and in what situations such an intervention is admissible. Following the recommendations made by the ILO Governing Body and the United Nations Human Rights Committee the Government is currently engaged in a process of revision of the labour laws prevailing in the country, in the spirit of "democratization through changes and reforms" pursued by the Government since its inauguration in 1993. Under the "Presidential Vision for New Industrial Relations" announced by President Kim Young-Sam on 24 April 1996 a

Presidential Commission (PCIR) was established on 9 May 1996, composed of 30 members including representatives of the KCTU, of which Messrs. Kwon and Yang are President and Vice-President, respectively. The Government will initiate the revision of current labour laws on the basis of the PCIR report. In conclusion, the Government states that Messrs. Kwon and Yang's involvement in acts of dispute described above went considerably beyond simple advice given to trade union members on their rights, since they instigated violent acts of dispute in violation of the Criminal law and the relevant labour laws, which resulted in a serious threat to the public order. The Government adds that, as stipulated by article 19.3 of the International Covenant on Civil and Political Rights, the right to freedom of expression can be restricted by law for respect of rights or reputations of others and for protection of public order.

8. The source, in its observations, confirmed the release of Mr. Kwon on 13 March 1996.

9. It appears from the facts as described above that the detention of Mr. Yang Kyu-Hun is solely motivated by activities he carried out in the free exercise of his rights to freedom of opinion and expression and to freedom of peaceful assembly and association, guaranteed by articles 19 and 20, respectively, of the Universal Declaration of Human Rights, and by articles 19, 21 and 22, respectively, of the International Covenant on Civil and Political Rights to which the Republic of Korea is a Party. In view of the restrictions provided by the Korean law, under which the exercise of these rights is limited by the prohibition of a third party intervention in a labour dispute, it remains to be seen whether the activities carried out by Mr. Yang could have harmed the rights and reputations of others or could have harmed public order - which the Government claims they did. The Working Group acknowledges that Mr. Yang's interventions in the labour disputes and the organizing of workers' demonstrations could indeed have provoked traffic disruptions and intruded into private premises. But the harm caused to public order and to the rights of others by Mr. Yang's acts is, in the Working Group's opinion, insignificant, or in any case too small to justify the restriction of the aforementioned fundamental rights. Likewise, the Working Group deems there is nothing in Mr. Yang's acts which can be seen as harmful to the reputations of others. The Working Group believes that the activities carried out by Mr. Yang were not of a nature to justify the Government's resorting to the admissible restrictions, as laid down by the Korean law, which are necessary for the respect of rights or reputations of others, or for the protection of public order.

10. The Labour Dispute Adjustment Act currently applied in the Republic of Korea is not in conformity with the provisions of the International Covenant on Civil and Political Rights and confers on the detention of persons held for having violated it an arbitrary character.

11. The Working Group notes with satisfaction the release of Kwon Young-kil, on the one hand, and the preparations under way in the Republic of Korea for a new labour law, on the other. It is hoped that this new legislation would fully guarantee the right to freedom of association, in conformity with the aforementioned provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

12. In the light of the above the Working Group decides:

(a) The case of Kwon Young-kil is filed, without prejudging the nature of his detention, in terms of paragraph 14.1 (a) of the Working Group's revised methods of work which provide that "If the person has been released, for whatever reason, since the Working Group took up the case, it shall decide in principle to file the case".

(b) The detention of Yang Kyu-hun is declared to be arbitrary being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the International Covenant on Civil and Political Rights to which the Republic of Korea is a Party, and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

13. Consequent upon the decision of the Working Group declaring the detention of Yang Kyu-hun to be arbitrary, the Working Group requests the Government of the Republic of Korea to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 17 September 1996.

DECISION No. 26/1996 (VENEZUELA)

Communication addressed to the Government of Venezuela on 20 February 1996.

Concerning: Carlos José González, Osmán José Colina Hernández, Guillermo Tamayo Rivas, Juan José Villamizar, Luis Gerónimo Valásquez and José Vargas Pérez, on the one hand, and the Republic of Venezuela, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. The Working Group further notes that the Government concerned has informed the Group and the source has confirmed, that the above-mentioned persons are no longer in detention.

4. In the context of the information received and having examined the available information, the Working Group, without prejudging the nature of the detention, decides to file the cases of Carlos José González, Osmán José Colina Hernández, Guillermo Tamayo Rivas, Juan José Villamizar, Luis Gerónimo Velásquez and José Vargas Pérez under the terms of paragraph 14.1 (a) of its methods of work.

Adopted on 17 September 1996.

DECISION No. 27/1996 (TURKEY)

Communication addressed to the Government of Turkey on 20 February 1996.

Concerning: Ibrahim Sahin, on the one hand and the Republic of Turkey, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. The Working Group further notes that the Government concerned has informed the Group, which fact has been confirmed by the source, that the above-mentioned person is no longer in detention, since he has been provisionally released on 17 November 1995.

4. Having examined the available information and without prejudging the nature of the detention, the Working Group decides to file the case of Ibrahim Sahin in terms of paragraph 14.1 (a) of its revised methods of work. Nevertheless, the case will be re-opened should the Working Group be informed that Mr. Sahin has again been placed under detention.

Adopted on 17 September 1996.

DECISION No. 28/1996 (TURKEY)

Communication addressed to the Government of Turkey on 20 February 1996.

Concerning: Ibrahim Aksoy, on the one hand and the Republic of Turkey, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of Turkey. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. According to the communication submitted by the source, a summary of which was forwarded to the Government, Ibrahim Aksoy was arrested on 14 October 1995 at Ankara airport, and is under detention in Ankara Central Prison. Aksoy is a former deputy and chairman of the Party for Democracy and Renewal. He was charged with having disseminated propaganda against the indivisibility of the State in a speech made in May 1991 at the party congress of the Popular Workers' Party (HEP) in Konya, a charge which was denied by the accused during his trial. For this he was given a cumulative prison sentence of four years and eight months, following his conviction by the District Court in Konya on 9 March 1994 and subsequently by the State Security Court in Istanbul. A later communication reports that that sentence was confirmed in May 1995 by the High Court of Appeals.

6. The Government's reply confirms that Aksoy was convicted of disseminating separatist propaganda in a speech delivered on 18 May 1991 in his capacity as HEP deputy at the Party conference in Konya. It adds that he was sentenced by the Konya State Security Court on 15 November 1994 to a prison term of one year and eight months and to a fine, a sentence confirmed on 21 March 1995. That sentence was commuted to one of 10 months' imprisonment and a fine on 17 November 1995, following an amendment to the Anti-Terrorist Act.

7. The Government further states that Aksoy was referred to the Istanbul State Security Court in 1994, charged with disseminating propaganda designed to destroy the indivisibility of the State, an offence for which he was

sentenced by the Fourth State Security Court on 12 June 1995. On 1 December 1995, by virtue of an amendment to the Anti-Terrorist Act, Aksoy received a sentence of one year and four months' imprisonment and a fine.

8. According to the source, the two sentences handed down by two different courts would appear to be based on the same grounds: the speech given on 18 May 1991 at the congress of a political party of which the accused is leader. The Government's reply implicitly accepts these grounds, although it mentions very specifically the grounds for the first conviction - the speech referred to - and does not indicate any particular grounds for the second one.

9. Under these circumstances, it has to be recognized that the detention is arbitrary because it is in violation of the general principle of criminal and procedural law *non bis in idem* under category III of the principles approved by the Group for the consideration of cases; it involves such a serious breach of the norms governing due process of law as to make the detention arbitrary.

10. In the light of the above the Working Group decides:

> The detention of Ibrahim Aksoy is declared to be arbitrary being in contravention of articles 9 and 11 of the Universal Declaration of Human Rights and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

11. Consequent upon the decision of the Working Group declaring the detention of Ibrahim Aksoy to be arbitrary, the Working Group requests the Government of Turkey to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights.

Adopted on 17 September 1996.

DECISION No. 29/1996 (SYRIAN ARAB REPUBLIC)

Communication addressed to the Government of the Syrian Arab Republic on 22 February 1996.

Concerning: Usama Ashur al-Askari, al-Hareth al-Nabham, Safwam Akkash, Taysir Hasun, Adib al-Jani, Ratib Sha´bu, Hussain al-Subayrani, Azia Tassi, Bakri Fahmi Sidqi, Bassam Bedour and Ammar Rizq, on the one hand and the Syrian Arab Republic, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Syrian Arab Republic. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The Working Group considers that:

(a) Usama Ashur al-Askari, al-Hareth al-Nabham, Safwam Akkash, Taysir Hasun, Adib al-Jani, Ratib Sha'bu, Hussain al-Subayrani, Azia Tassi, Bakri Fahmi Sidqi, Bassam Bedour and Ammar Rizq were reportedly arrested on various dates between 1982 and 1990, on the sole charge of belonging to the Hizb-'al-Amal al Shuyu'i, the Party for Communist Action. The persons referred to were not brought to trial until 1994, when they were sentenced by the Supreme State Security Court to prison terms ranging from 8 to 15 years.

(b) The Working Group deplores the Government's lack of cooperation, which makes it impossible for it to know what the latter's position is in respect of these cases. Moreover, the information provided by the source is clearly inadequate, so much so that no indication is given of each individual's date of arrest, what sentence was passed in each case, or why the detainees have not benefited from the 1995 amnesty. Most serious of all, neither the source nor the Government states whether or not the time that has elapsed between the day of arrest and the day of sentencing will be taken into account in the sentences handed down.

(c) Notwithstanding these shortcomings, the Working Group decides that the detention is to be declared arbitrary under category II above, in that the reason for the charge is the legitimate exercise of the right to freedom of opinion, expression and association enshrined in articles 19 and 20 of the Universal Declaration of Human Rights and in articles 19 and 22 of the International Covenant on Civil and Political Rights.

6. In the light of the above the Working Group decides:

> The detention of Usama Ashur al-Askari, al-Hareth al-Nabham, Safwam Akkash, Taysir Hasun, Adib al-Jani, Ratib Sha'bu, Hussain al-Subayrani, Azia Tassi, Bakri Fahmi Sidqi, Bassam Bedour and Ammar Rizq, is declared to be arbitrary being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights, and articles 19 and 22 of the International Covenant on Civil and Political Rights to which the Syrian Arab Republic is a party and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

7. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of the Syrian Arab Republic to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Approved on 17 September 1996.

DECISION No. 30/1996 (SYRIAN ARAB REPUBLIC)

Communication addressed to the Government of the Syrian Arab Republic on 22 February 1996.

Concerning: Mazim Shamsin and Firas Yunis, on the one hand and the Syrian Arab Republic, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Syrian Arab Republic. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The Working Group considers that:

(a) Mazim Shamsin and Firas Yunis were reportedly arrested in 1990 and 1981 respectively, on the sole charge of belonging to the Hizb-'al-Amal al Shuyu'i, the Party for Communist Action. The trial of these detainees began only in 1992. In 1994 they were sentenced to prison terms of 15 years.

(b) The Working Group deplores the lack of cooperation on the part of the Government, which makes it impossible for it to know what the latter's position is in respect of this case. Moreover, the information provided by the source is clearly inadequate, so much so that no indication is given as to whether or not the time that has elapsed between the day of arrest and the day of sentencing will be taken into account in the sentence handed down.

(c) Notwithstanding these shortcomings, the Working Group decides that the detention is to be declared arbitrary under category II above, in that the reason for the charge is the legitimate exercise of the right to freedom of opinion, expression and association enshrined in articles 19 and 20 of the Universal Declaration of Human Rights and in articles 19 and 22 of the International Covenant on Civil and Political Rights. Moreover, in the case of Firas Yunis, the detention is also arbitrary under category III, in that he was not brought before the court - which ought to have tried him without

delay, as required by articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights - until after he had been in prison for 11 years.

6. In the light of the above the Working Group decides:

(a) The detention of Mazim Shamsin is declared to be arbitrary being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights, and articles 19 and 22 of the International Covenant on Civil and Political Rights to which the Syrian Arab Republic is a party and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) The detention of Firas Yunis is declared to be arbitrary being in contravention of articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights, and articles 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights to which the Syrian Arab Republic is a party and falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group.

7. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of the Syrian Arab Republic to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Approved on 17 September 1996.

DECISION No. 31/1996 (SYRIAN ARAB REPUBLIC)

Communication addressed to the Government of the Syrian Arab Republic on 22 February 1996.

Concerning: Mustafa al-Hussain, Umar al-Kayak, Muhammad Kheir Khalaf, Abd al-Karim Issa, Abdalla Qabbara, Hikmat Mirjaneh, Yasin al-Haj Salih and Yusha al-Khatib, on the one hand and the Syrian Arab Republic, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Syrian Arab Republic. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The Working Group considers that:

(a) Mustafa al-Hussain, Umar al-Kayak, Muhammad Kheir Khalaf, Abd al-Karim Issa, Abdalla Qabbara, Hikmat Mirjaneh, Yasin al-Haj Salih and Yusha al-Khatib were reportedly arrested on various dates between 1980 and 1990, on the sole charge of belonging to the asl-Hizb al Shuyu'i al Maktab al Siyassi, the Communist Party Political Bureau. Over 100 people were involved in the arrests, all of whom - with the exception of the persons referred to - were released as a result of various amnesties. The aforementioned detainees, on the other hand, did not come to trial until 1992. In 1994 they were sentenced by the Supreme State Security Court to terms of imprisonment ranging from 12 to 15 years, and they have not benefited from the 1995 amnesty.

(b) The Working Group deplores the Government's lack of cooperation, which makes it impossible to know what the latter's position is in respect of these cases. Moreover, the information provided by the source is clearly inadequate, so much so that no indication is given of each individual's date of arrest, what sentence was passed in each case, or why none of them have benefited from the 1995 amnesty. Most serious of all, neither the source nor

the Government states whether or not the time that has elapsed between the day of arrest and the day of sentencing will be taken into account in the sentences handed down.

(c) Notwithstanding these shortcomings, the Working Group decides that the detention is to be declared arbitrary under categories II and III above. First, because the reason for the charge is the legitimate exercise of the right to freedom of opinion, expression and association enshrined in articles 19 and 20 of the Universal Declaration of Human Rights and in articles 19 and 22 of the International Covenant on Civil and Political Rights. Secondly, because the detainees were not brought before the trial court without delay, as required under articles 9, 10 and 11 of the Universal Declaration of Human Rights, and articles 9 (3) and 14 of the International Covenant on Civil and Political Rights.

6. In the light of the above the Working Group decides:

> The detention of Mustafa al-Hussain, Umar al-Kayak, Muhammad Kheir Khalaf, Abd al-Karim Issa, Abdalla Qabbara, Hikmat Mirjaneh, Yasin al-Haj Salih, and Yusha´al Khatib is declared to be arbitrary being in contravention of articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights, and articles 9.3, 14, 19 and 22 of the International Covenant on Civil and Political Rights to which the Syrian Arab Republic is a party and falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group.

7. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of the Syrian Arab Republic to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 17 September 1996.

DECISION No. 32/1996 (COLOMBIA)

Communication addressed to the Government of Colombia on 20 February 1996.

Concerning: Gildardo Arias Valencia (or Carlos Enrique Guzmán), on the one hand, and the Republic of Colombia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Colombia. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The Working Group considers that:

(a) According to the communication, Gildardo Arias Valencia - also known as Carlos Enrique Guzmán since a previous detention in 1975 on the charge of belonging to the Ejército Popular de Liberación (EPL) - was detained on 7 June 1994 in the town of Ibagué, in Tolima, by officers of the Sixth Army Brigade and the Administrative Department for Security (DAS), under an arrest warrant dated 14 July 1993 and issued by the Office of the Regional Prosecutor attached to the Twentieth Brigade. He was charged with rebellion and false impersonation, and is being tried in case No. JR 2988 before the Regional Court, composed of faceless or unidentified judges.

(b) The communication sets forth a number of complaints about the procedure applied to Arias Valencia, the following being taken as of particular importance for an appreciation of the arbitrary character of the detention:

(i) Under article 415 of the Code of Penal Procedure, if pre-trial proceedings have not been completed and formal charges prepared within 240 days of the deprivation of liberty, the detainee is entitled to release on bail. This deadline expired on 2 February 1995, but the detainee's release was not ordered.

(ii) Defence counsel protested against this omission and requested bail; the application should have been dealt with by the Regional Prosecutor within three days, but had not been processed by the statutory deadline.

(iii) Negligence on the part of the Prosecutor was claimed in a habeas corpus petition lodged on 7 February with the 27th Circuit judge, who dismissed the action on the ground that the period of three days for the Prosecutor to decide on the application for release begins from the time the case file reaches his office, and not from the time of submission of the application.

(iv) On 8 February the Prosecutor agreed to the detainee's release on high bail, which was paid on 10 February. Despite the release having been ordered and the bail paid, the court failed to issue the release warrant, making it necessary for the defence to lodge a second application for habeas corpus on account of the unlawful prolongation of the detention. The officiating judge granted the application for habeas corpus and ordered the immediate enforcement of the release warrant.

(v) However, the prison authorities failed to comply with the court order. On the following day, 11 February, the Prosecutor hurriedly concluded the pre-trial steps, laid charges and revoked the release order. A complaint was lodged concerning a further irregularity: when the changes were laid, written submissions by the defence were not annexed to the file.

(vi) On 13 February the prison authorities informed the prisoner of the warrant for his release, and of the Prosecutor's order revoking it.

(c) The Government of Colombia neither challenged the facts alleged nor extended its cooperation to the Working Group within the 90-day deadline. Accordingly, the Working Group will take its decision solely on the merits of the information provided by the source and the accompanying documents.

(d) In the view of the Working Group, the allegations contained in the communication, which have not been challenged, constitute serious violations of the provisions relating to due process of law which are of such gravity as to confer on the deprivation of liberty an arbitrary character, being in contravention both of the internal provisions of Colombian law and of the provisions of the International Covenant on Civil and Political Rights. Regarding the former, the requirement of article 415 of the Code of Penal Procedure that a detainee shall be released on bail if the pre-trial steps have not been completed within 240 days of his detention was not complied with. Moreover, Colombian legislation incorporates the principle of the separation of powers, and it is unlawful for the administrative or prison authorities to contest or fail to comply with court orders. There was also a violation of the rule in article 9.3 of the International Covenant on Civil and Political Rights embodying the right of anyone facing criminal charges to release, which may be subject to guarantees to appear for trial. The judge

set what he considered to be an appropriate, albeit rather large, amount of bail and it was unlawful for the Prosecutor not to give effect to the release order issued by him.

6. In the light of the above the Working Group decides:

> The detention of Gildardo Arias Valencia is declared to be arbitrary being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and of articles 9 and 14 of the International Covenant on Civil and Political Rights, to which Colombia is a party, and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

7. Consequent upon the decision of the Working Group declaring the detention of Gildardo Arias Valencia to be arbitrary, the Working Group requests the Government of Colombia to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. This is without prejudice to the execution of any sentence passed at the trial, once it becomes enforceable.

Adopted on 17 September 1996.

DECISION No. 33/1996 (PERU)

Communication addressed to the Government of Peru on 20 February 1996.

Concerning: César Augusto Sosa Silupú, on the one hand, and the Republic of Peru, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Peru. In the context of the information available to it, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case.

5. The Working Group considers that:

(a) According to the communication, César Augusto Sosa Silupú was detained on 16 November 1995 by members of the police at Piura National University, his place of work. He had already been detained between August 1992 and July 1993 on charges of terrorism, of which he was acquitted. However, on 6 June 1995 the Supreme Court quashed the judgement acquitting him and ordered a new trial, which is under way. The detainee denies any links with Sendero Luminoso.

(b) The Government of Peru merely states that the judgement of acquittal was quashed on 6 June 1994.

(c) Since, as may be noted, neither the complainant nor the Government provides any information whatsoever about the acts for which the person in question has been tried, it is impossible for the Working Group to reach a decision as to whether or not the detention is arbitrary.

(d) The Working Group has received numerous communications alleging inconsistencies within Act No. 25,475, in respect of which it will make a determination after it visits Peru, as it has already been invited to do by the Government.

6. In the light of the above, the Working Group decides to keep the case pending until it receives fuller and more up-to-date information, under the terms of paragraph 14.1 (c) of its methods of work.

Adopted on 17 September 1996.

DECISION No. 34/1996 (PERU)

Communication addressed to the Government of Peru on 20 February 1996.

Concerning: Margarita M. Chuquiure Silva, on the one hand, and the Republic of Peru, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Peru. In the context of the information available to it, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case.

5. The Working Group considers that:

(a) According to the communication, Margarita M. Chuquiure Silva, a lawyer, was detained on 28 February 1994 as she left her office, where she had gone on business. She was accused by a detainee who had benefited from the repentance law of having links with Sendero Luminoso.

(b) The Government states that a decision by the Supreme Court is pending with regard to the 20-year prison sentence handed down against the lawyer for the crime of terrorism.

(c) Since, as may be noted, neither the complainant nor the Government provides any information whatsoever about the acts for which the detainee has allegedly been convicted, it is impossible for the Working Group to reach a decision as to whether or not the detention is arbitrary.

(d) Regarding the alleged procedural irregularities, the same complaint has been made to the Special Rapporteur on the independence of judges and lawyers.

(e) The Working Group has received numerous communications alleging inconsistencies within Act No. 25,475, in respect of which it will make a determination after it visits Peru, as it has already been invited to do by the Government.

6. In the light of the above, the Working Group decides to keep the case pending until it receives fuller and more up-to-date information, under the terms of paragraph 14.1 (c) of its methods of work.

Adopted on 17 September 1996.

DECISION No. 35/1996 (PERU)

Communication addressed to the Government of Peru on 4 May 1994.

Concerning: Mercedes Milagros Núñez Chipana, on the one hand, and the Republic of Peru, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes the information forwarded by the Government concerned in respect of the case in question more than two years after the transmittal of the letter by the Working Group.

3. The Working Group also notes that the Government concerned has informed the Group that the above-mentioned person is no longer in detention.

4. In the context of the information received and having examined the available information, the Working Group, without prejudging the nature of the detention, decides to file the case of Mercedes Milagros Núñez Chipana, under the terms of paragraph 14.1 (a) of its methods of work.

Adopted on 17 September 1996.

DECISION No. 36/1996 (INDONESIA)

Communication addressed to the Government of Indonesia on 5 February 1995.

Concerning: Francisco Miranda Branco, Isaac Soares, Miguel de Deus, Pantaleão Amaral, Rosalino dos Santos, Pedro Fatima Tilman, Marcus de Araujo, Anibal, Nuno de Andrade Sarmento Corvelho, Octaviano, Rui Fernandez, Jose Antonio Neves and Munir, on the one hand, and the Republic of Indonesia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. The Working Group welcomes the cooperation of the Government of Indonesia which forwarded its responses of 18 and 25 April 1995 to the allegations made concerning the above-mentioned persons. The Working Group transmitted the replies provided by the Government to the source but, to date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. According to the communication submitted by the source, a summary of which was forwarded to the Government, the persons concerned may be divided into five groups: (a) Miranda Branco; (b) Isaac Soares, Miguel de Deus, Pantaleão Amaral, Rosalino dos Santos, Pedro Fatima Tilman, Marcus de Araujo and Nuno de Andrade Sarmento Corvelho; (c) Jose Antonio Neves; (d) Munir and (e) Anibal, Octaviano and Rui Fernandez.

6. Francisco Miranda Branco, born in 1952, was allegedly arrested on 6 December 1991 in Dili, East Timor by Indonesian security forces. Initially held in Comarca prison in Dili, he was on 11-12 June 1994 allegedly transferred to Semerang prison in Central Java. Pursuant to a trial Miranda Branco was sentenced to 15 years' imprisonment under the "Anti-Subversion Law" for allegedly being one of the organizers of a demonstration against the "Indonesian occupation of East Timor and for unjustly accusing Indonesia of violating human rights in East Timor". According to the source although Miranda Branco was a witness to the Santa Cruz incidents in Dili in November 1991 he neither helped organize nor participated in the above-mentioned demonstration. The Government, on the other hand, states that Branco was in fact the Secretary of the executive committee as well as the head of documentation and analysis of the "clandestine" branch of the anti-integration campaign. The Government further

alleges that Branco was one of the active organizers of the violent demonstration causing the incidents of 1991. Branco is further alleged to have played a leading role in organizing secret meetings to initiate strategies and plans leading to the disruption of law and order. The Government's position is that Branco was tried by independent and impartial courts and his activities having been substantially proven, resulting in compromising the territorial integrity of the Republic of Indonesia, the Dili Court of First Instance on 22 June 1992 sentenced him to 15 years' imprisonment. The Appellate Court, allegedly, affirmed the decision of the Trial Court. In 1994 Miranda Branco was granted a two-month remission on his sentence. On these grounds the Government challenges the allegations of arbitrary detention made by the source.

7. Isaac Soares, Miguel de Deus, Pantaleão Amaral and Rosalino dos Santos were reportedly sentenced to 20 months' imprisonment and Pedro Fatima Tilman to two years' imprisonment. Soares, de Deus and Amaral were allegedly tried at the Dili District Court and convicted of "expressing feelings of hostility to the Government" under article 54 of the Indonesian Criminal Code. None of the three were allegedly accompanied by legal counsel either during interrogation or during the trial. After the sentence they are believed to be held in Becora prison in Dili.

8. The Government responded by stating that Amaral, Soares, de Deus and Santos were all accomplices of Pedro de Fatima Tilman. The Government's position is that Tilman was a member of the clandestine branch of the anti-integration group and that his main task was to help prepare propaganda material, identify the opportunities for the violation of the law and disruption of public order and create such opportunities when possible. The Government considers Tilman to be a political agent under the control and command of the "forsa", the core armed groups. Tilman is alleged to have admitted of having organized a demonstration mainly targeted to attract foreign journalists residing at the Mahkota Hotel on 14 April 1994. The Government alleges that this task was basically ordered by the "forsa", the core armed groups. Participation in this demonstration was planned to be enlarged to create a situation for a clash between pro-integration and anti-integration sympathizers before foreign journalists. The Government position is that Tilman's activities should be evaluated in their entirety that he was arrested not merely for shouting anti-integrating slogans but acting as a dangerous agent of the armed group seeking to compromise the territorial integrity of Indonesia. The Government states that Tilman and his accomplices were accorded due process of law and all rights guaranteed to them by the Indonesian Criminal Code. Tilman, the Government states, was afforded the assistance on 23 June 1994 of proper legal counsel. He was sentenced to one year eight months' imprisonment. His accomplices Amaral, Soares, de Deus and Santos were also sentenced to one year eight months' imprisonment.

9. In respect of Marcus de Araujo and Nuno de Andrade Sarmento Corvelho, they were also arrested in May 1994 by Indonesian Military forces, according to the source, for their non-violent political activities. They were reportedly detained in Dili, East Timor. The source could not provide any details regarding the trial of these persons. The Government in its response of 25 April 1995 stated that Araujo was one of the accomplices of Tilman and that he was arrested for the same charges as Tilman and after having accorded

him due process of law as well as other rights guaranteed by the Indonesian Criminal Procedure Code, sentenced him to one year eight months' imprisonment, which he was due to complete on 4 December 1995. Corvelho, on the other hand was arrested from 18 to 22 April 1994 and he was found at the place where Tilman and his accomplices were arrested. The Government states that when it realized that he was not involved in the crime, he was released and that during his detention he was accorded due process of law.

10. In respect of Jose Antonio Neves the source alleges that he is a leading member of the clandestine pro-independence East Timorese movement and a student of the theological institute in Malang. He was allegedly arrested on 19 May 1994 in Malang by military intelligence authorities and was taken to a safe house of the military's intelligence unit (SGI) and later transferred to the custody of the Public Prosecutor. As of late July 1994 he was held in Lowokwaru prison in Malang. The Government denies that Neves was a student. It states that he was an employee in a private company. The Government, accepting the date of arrest as 19 May 1994, denies that he was arrested by military intelligence and detained in a military intelligence safe house. The Government's position is that Neves was arrested by the police and detained at the police detention centre in Malang. The Government further stated that Neves is one of the leaders of the "clandestine" branch of the anti-integration campaign which sought to compromise the territorial integrity of Indonesia. The Government charges that Neves was mainly required to produce propaganda and campaign material to be distributed to foreign tourists visiting Malang and other places and creating and spreading false reports on the situation of human rights in East Timor to be disseminated in western countries. It is also stated by the Government that Neves was ordered to muster logistic and financial support as well as armaments for the "forsa" or the core armed groups and that some of the money received by him as contributions was diverted by him for his personal use. The Government states that when arrested he was informed of the charges against him and denied all allegations of torture. The Government admitted that as on the date of its response he was still awaiting trial.

11. In respect of Munir, a human rights lawyer at the Surabaya office of the Indonesian Legal Aid Institute (LBH), he was allegedly arrested on 19 August 1994 in Malang, East Java during a meeting with 14 workers from a company whose case LBH was assisting. Although he was released at the police station where he was taken, he was accused of organizing a public meeting without first obtaining police permission under article 510 of the Indonesian Criminal Code. The source alleges that such a law is repressive and prevents lawful dissent and political activities exposing those resorting to it to short-term interrogation in custody, imprisonment and detention and that the use of these laws are directed against human rights activists and lawyers.

12. The Government, however, states that Munir practises general law and is not specifically a human rights lawyer. It further states that the labour dispute in question with reference to 14 workers was finally adjudicated upon by the Supreme Court on 16 July 1994 and that its verdict is final subject to review if fresh evidence comes to light. Contrary to the source, the Government alleges that Munir on 19 August 1994 organized a public gathering in his personal capacity and not on behalf of his law firm and that the said meeting had nothing to do with the labour dispute, that having been finally

settled. In this regard the Government refers to article 510 of the Indonesian Criminal Code which provision relates to authorization from the Government or police for public or mass gatherings and traffic violations resultant from the organization of such mass gatherings. In this context the Government states that these provisions are administrative in nature and do not deal with the question of freedom of expression. The provisions are aimed according to the Government to protect the privacy of others and are in public interest. Denying the arrest of Munir, the Government states that he was charged with a petty offence, questioned and two weeks later on 1 September 1994 tried by the First Instance Court of Malang and fined US$ 14.

13. In respect of Anibal, Octaviano and Rui Fernandez, though the source alleged that they also were arrested by the Indonesian military forces in May 1994 in Dili, East Timor, nothing more is stated by the source. The Government responded by stating that their names do not correspond to the lists of prisoners and detainees or those of released detainees. The Government, therefore, maintained that these names were either pseudonymous, aliases or simply non-existent.

14. Quite apart from the specific response of the Government with reference to the allegations made by the source on each person, the Government has made certain general comments which may be noticed. The Government maintains that Law No. 8, of 1981 concerning the Indonesian Criminal Procedure Law provides the relevant legal basis for the arrest and detention of those who violate the law. That arrest and detention can be affected only by police officers and that those arrested and the members of their family are informed of the reasons for their arrest and detention and that those who allege that they have been arbitrarily arrested can take recourse to legal remedies for their protection. The Government further refers to the independence of the Judiciary which ensures protection of a person's constitutional guarantees. Laws in Indonesia, claims the Government, are aimed at guaranteeing civil and political rights as well as the independence and impartiality of the judiciary. With specific reference to the case of East Timorese youths, the Government states that the anti-integration campaign in East Timor is composed of three arms, namely, the "forsa" or the core of armed groups, the "cellula" or supporting units of armed groups and the "clandestine" or the urban undercover groups. In this context the Government states that the activities of those involved in the anti-integration campaign violate two basic principles of human rights: first the exercise of the right to self-determination of the majority of the people in East Timor to integrate with Indonesia and second, the violation of international instruments guaranteeing the respect of Indonesian territorial integrity and national sovereignty. Those involved in the anti-integration campaign, claims the Government, should he considered as violators of both national and internationally recognized instruments.

15. In the case of Francisco Miranda Branco, from the facts as disclosed, it may not be possible for the Working Group to come to any definitive conclusion in respect of the nature of Branco's detention. Branco is charged and convicted for actively organizing violent demonstrations and of actively planning disruption of law and order. The Indonesian courts, affirming the role of Branco, sentenced him to imprisonment and the Appellate Court has

apparently upheld the conviction. In these circumstances, the Working Group is not in a position to hold the detention of Branco to be arbitrary in the absence of further information. It decides to keep the case of Francisco Miranda Branco pending.

16. In respect of Tilman, Soares, de Deus, Amaral and Do Santos, each of them seemed to have served their respective sentences which were completed on 4 December 1995. The contentious nature of the facts, both in the case of Tilman and his alleged accomplices and given the fact that they have been convicted pursuant to a trial in which the Government states that their constitutional guarantees were fully respected, and there is no evidence to suggest that they were not, the Working Group considers it appropriate to file the case in the light of their release on 4 December 1995.

17. In respect of Corvelho the Government admits its mistake and states that Corvelho was released as soon as it was realized that he was not involved in any crime. Though his detention cannot be justified, the Working Group is of the belief that as Corvelho was detained for only four days and released as soon as it was realized that he was not involved in any crime, it considers it appropriate to file the case of Corvelho also.

18. In the case of Antonio Neves, the Working group considers his detention to be arbitrary. He was allegedly arrested on 19 May 1994 and was still awaiting trial when the Government last responded on 25 April 1995. Admittedly Neves was detained for being part of the anti-integration campaign in which his role was to produce propaganda and campaign material to be distributed to foreign tourists. Though the Government alleges that he was required to master logistic and financial support, as well as armaments for the "forsa" or the core armed groups, the Government has provided no evidence that this was in fact done, nor has a court of law found such evidence to be true. His detention clearly violates articles 9 and 19 of the Universal Declaration of Human Rights.

19. In the case of Munir, the human rights lawyer, the Government has categorically stated that he was not detained. In terms of the mandate of this Working Group, it is not called upon to comment on the legality of the violation of articles 510 and 511 of the Indonesian Criminal Code preventing the holding of public or mass meetings. As Munir was never arrested and the source has not provided the Group with any convincing material that he was, the Working Group has no choice but to file his case.

20. To similar effect is the decision of the Working Group in respect of Octaviano, Anibal and Rui Fernandez, though for different reasons. In their case the Government denies that their names were included either in the list of detainees or those released. In the absence of any definite information in this regard, their cases are also filed.

21. In the light of the above the Working Group decides:

(a) The detention of Jose Antonio Neves is declared to be arbitrary, being in contravention of articles 9 and 19 of the Universal Declaration of Human Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) In the cases of Isaac Soares, Miguel de Deus, Pantaleão Amaral, Rosalino dos Santos, Pedro Fatima Tilman, Marcus de Araujo, Nuno de Andrade Sarmento Corvelho, the Working Group, having examined the available information and without prejudging the nature of their detention, decides to file these cases in terms of paragraph 14.1 (a) of its revised methods of work.

(c) The cases of Octaviano, Anibal, Rui Fernandez and Munir are also filed since these persons have apparently never been detained.

(d) In the case of Francisco Miranda Branco, the Working Group decides, for the reasons mentioned in the main body of the decision, to keep it pending while awaiting further information under paragraph 14.1 (c) of its revised methods of work.

22. Consequent upon the decision of the Working Group declaring the detention of Jose Antonio Neves to be arbitrary, the Working Group requests the Government of Indonesia to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights.

Adopted on 19 September 1996.

## REVISED DECISION No. 1/1996 (COLOMBIA)

1. In its decision No. 15/1995 concerning Colombia, the Working Group declared the detention of Gerardo Bermúdez Sánchez to be arbitrary, being in contravention of articles 1, 7, 9, 10 and 11.1 of the Universal Declaration of Human Rights and articles 9, 14.1 and 14.3 (b), (d) and (e) of the International Covenant on Civil and Political Rights, and falling within category III of the principles applicable to the consideration of the cases submitted to the Working Group.

2. The communication received by the Working Group alleges that Gerardo Bermúdez Sánchez, a member of the national leadership of the Unión Camilista Ejército de Liberación Nacional (UC-ELN), a politico-military organization, was detained on 3 December 1992 in Bucaramanga by soldiers from the Army's Fifth Brigade and members of the Anti-Kidnapping and Blackmail Unit (UNASE) of the National Police. He was facing charges of rebellion, terrorism, kidnapping for ransom, forgery of an official document and possession of narcotics.

3. The communication alleges that the detention of Gerardo Bermúdez Sánchez was arbitrary since he was: (1) given unequal treatment before the court at the pre-trial stage, on account of the refusal to allow evidence requested by the defence; (2) denied his own choice of counsel, pressure having been brought to bear on the lawyer appointed, forcing her later to leave the country; (3) prevented from engaging in confidential communication with counsel because microphones were installed in his cell; (4) held on military premises; and (5) subjected to torture.

4. The Working Group found the facts indicated in (1), (2), (3) and (4) of paragraph 3 above to have been attended, and considered that the first three constituted violations of the international provisions relating to a fair trial of such gravity as to confer on the detention an arbitrary character, and that during subsequent proceedings the Government should remedy the irregularities committed in order to provide the accused with the guarantees of due process, as required by articles 1, 7, 9, 10 and 11.1 of the Universal Declaration of Human Rights and articles 9, 14.1 and 14.3 (b), (d) and (e) of the International Covenant on Civil and Political Rights.

5. The Government of the Republic of Colombia, in a substantiated and documented submission, requested the Working Group to reconsider the above-mentioned decision.

6. The Working Group agreed to the Government's request for a hearing, which was held on 14 September 1995, at its thirteenth session.

7. The Working Group transmitted the contents of the Government's request to the source, thereby giving it an opportunity to be heard. At its fifteenth session the Group heard in person the individual who had submitted the communication.

8. When it revised its methods of work at its fourteenth session to establish a procedure for dealing with requests for a review, the Working Group decided that:

"Very exceptionally, the Group may, at the request of the Government concerned or the source, reconsider its decisions on the following conditions:

(a) If the facts on which the request is based are considered by the Group to be entirely new and such as would have caused the Group to alter its decision had it been aware of them;

(b) If the facts had not been known or had not been accessible to the party originating the request;

(c) In a case where the request comes from a Government, on condition that the latter has replied within 90 days as stipulated in the Working Group's revised methods of work."

9. Since the request for reconsideration of decision No. 15/1995 was made prior to the adoption of the aforementioned criteria, the Working Group decided, on the basis of the principle of non-retroactivity, that these criteria would be applied only to requests made after their adoption. Accordingly, the Working Group decided to consider the present request as admissible.

**First allegation as to the arbitrary nature of the detention: Gerardo Bermúdez Sánchez was given unequal treatment before the court, on account of the refusal to allow evidence requested by the defence.**

10. The Government of Colombia contends that the judge hearing the case did not refuse requests to produce evidence, but merely rejected immaterial evidence. The requests said by the source not to have been allowed related to: (a) testimony by the Minister of the Interior on the Government's position regarding political offences and the status of Bermúdez as viewed by the State; (b) an inspection of the premises where Bermúdez was held in order to evaluate his conditions of detention; (c) testimony by the prosecutor who issued the warrant to search the premises on which Bermúdez was present at the time of his arrest; by the official who arrested him; by the forensic physician who actually examined the detainee; and by the official of the Forensic Medicine Institute who should have carried out the medical examination; (d) the annulment of all the proceedings in view of the various irregularities described.

11. The Government's contention regarding the complete irrelevance of the request for it to state its position as to what constitutes a political offence and its opinion of a prisoner is valid. Such a statement represents neither testimony by a witness nor expert testimony, and it has no bearing on the material facts at issue in the proceedings. A witness is required to testify on facts of which he has cognizance and not on opinions.

12. The inspection of the place of detention may be important in order to determine whether any cruel, inhuman or degrading treatment occurred. Under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, any complaint concerning such acts must be investigated; moreover, statements obtained by such unlawful means are completely invalid.

Thus, refusal to conduct the inspection requested in principle constitutes a violation of the Convention. However, it is irrelevant in determining the arbitrary nature of the detention, since the place to have been inspected is not the place where the statements were made but one in which the detainee was held at a later point, when remanded in custody. Consequently, the refusal to allow the evidence in question may not be considered arbitrary.

13. The same does not obtain for the third item of evidence that was requested and denied: the appearance as witnesses of the prosecutor who issued the search warrant and of those who carried it out.

14. The Government itself recognizes that the Regional Prosecutor attached to the Judicial Police Department disregarded the instructions given by his superior, the Attorney-General, and failed to take part in person, as was his duty, in the search. The Regional Prosecutor entrusted the search to a military authority.

15. Furthermore, there were irregularities in the search proceedings and in the official report of significance for the determination of at least one offence, that of the possession of drugs. The search report makes no mention of the fact, which the detainee denies, that three tubes of cocaine were found in his possession. As the Government itself observes, this irregularity is all the more important since it was precisely an officer of the Second Army Division who was entrusted with conducting the medical tests which gave positive results for cocaine and marijuana. It is still more suspicious that, even before the results of the examination were known, the Commander of the Fifth Brigade stated that at the time of his arrest Bermúdez was under the influence of drugs, and that the examination in question was carried out not by the Forensic Medicine Institute but by a doctor who was on holiday and who is a lieutenant in the army reserve.

16. In view of the above, the refusal to take statements from the prosecutor, the commander who carried out the search and the doctor who performed the drug tests constitutes a denial of justice. Article 14.2 of the International Covenant on Civil and Political Rights sets forth the right of everyone charged with a criminal offence to examine, or have examined, the witnesses against him, in full equality.

17. The fourth request by Bermúdez's defence was for the proceedings to be declared null and void on account of various irregularities. The fact of not granting this request does not, of course, imply a denial of justice or a lack of equality between the parties.

**Second allegation: Gerardo Bermúdez Sánchez was denied his own choice of counsel, pressure having been brought to bear on the lawyer appointed, forcing her later to leave the country.**

18. The Government contends that is had not been informed of the pressure and threats to which the lawyer Lourdes Castro Mendoza alleges she was subjected, forcing her to abandon Bermúdez's defence and leave the country, and that there are therefore no effective grounds for the complaint that he was denied counsel of his own choosing.

19. It appears from the information provided by the two parties that:

(a) The report by the Representative for Human Rights on his visit to Bermúdez on 3 or 4 December 1992 (the Government's report does not give the date) states that the detainee expressed his concern to have access to a lawyer experienced in defending political prisoners; on 5 December, when informed of the next period of questioning, "the detainee expressed the wish to communicate with the Political Prisoners' Solidarity Committee in order to ask for a lawyer to be present for the questioning" (report dated 5 December 1992);

(b) Nevertheless, the questioning took place in the presence not of a lawyer chosen by the accused, but of assigned counsel;

(c) It was only on 14 December 1992 that "the collective secretariat of the unit specialized in trials on charges of terrorism approved Eduardo Umaña Mendoza to act as counsel appointed by Gerardo Bermúdez Sánchez", thereby authorizing him to take up the defence; on 8 February 1993 Mr. Umaña designated Lourdes Castro as his substitute, under his responsibility; as of 8 November, after Mr. Umaña had abandoned the case, Lourdes Castro was sole counsel; on 11 February 1994 Lourdes abandoned the case leaving Bermúdez without counsel until 21 April 1994, when he appointed the lawyer Valencia Rivera to defend him.

(d) Thus, between 11 February and 21 April 1994 the prisoner was without counsel. The Government's assertion that the lawyer was notified in person of a decision on 5 May (page 30 of the relevant paper) is thus inexact.

20. The lawyer gave up the case on account of the threats she received, which forced her to leave the country two days later. The threats took the form of suspicious surveillance of her office, telephone tapping, threatening messages via her paging system, in addition to earlier incidents such as the accusation made against her by the commander of the battalion where Bermúdez was held that her eagerness to defend him suggested that she was a guerilla and not just a lawyer.

21. The Government contends with reason that these facts were not brought to its attention at the appropriate time. Nevertheless, the facts were broadly publicized through other channels. For example, the International Working Group, a Colombian NGO, organized a large-scale solidarity campaign and Amnesty International took urgent action on behalf of the lawyer. Furthermore, one year previously, in February 1993, lawyers belonging to the Ombudsman's Office had assisted her in legal proceedings relating to the case.

22. The Government's claim that the failure of the lawyer to participate in her client's defence did not leave Bermúdez without counsel, as he had four lawyers, is unacceptable: under article 144 of the Code of Penal Procedure, an accused person is entitled to only one lawyer, who may designate an alternate under his responsibility. In actual fact, Bermúdez was without counsel for more than two months during the crucial phase of the completion of the investigation and the bringing of formal charges.

**Third allegation: Gerardo Bermúdez Sánchez was prevented from engaging in confidential communication with counsel because microphones were installed in his cell.**

23. According to the communication, Bermúdez disconnected microphones installed in his cell - which was where he initially consulted his lawyer. The consultations subsequently took place in the visiting room, thus enabling the military personnel responsible for the regiment where he was being held to listen to the conversations and Bermúdez complained about this in due time. Decision No. 15 found that this circumstance constituted a ground for declaring his detention to be arbitrary. In its request for a review, the Government contends that the allegation has not been proved and that, on the contrary, such practices are prohibited by Colombian legislation. Nevertheless, the Working Group is convinced by the fact that on 13 January 1994 the lawyer lodged a written complaint about the matter with the Special Investigations Department of the Attorney-General's Office and that the matter was also reported by the Congressional Peace-Coordinator on 17 January 1994.

24. In the opinion of the Working Group, the irregularities referred to in paragraphs 13 to 16 and 19 to 23 constitute violations of the rules of due process which are of such gravity as to confer on the deprivation of liberty an arbitrary character and therefore decides that it cannot grant the request for reconsideration submitted by the Government of Colombia.

Adopted on 22 May 1996.

REVISED DECISION No. 2/1996 (REPUBLIC OF KOREA)

1. The Working Group on Arbitrary Detention adopted on 30 May 1995 Decision No. 1/1995 by which it considered the detention of Lee Jang-hyong and Kim Sun-myung arbitrary, falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group, and the detention of Ahn Jae-ku, Ahn Young-min, Ryu Nak-jin, Kim Sung-hwan, Kim Jin-bae, Jong Hwa-ryo, Jong Chang-soo, Hong Jong-hee and Park Rae-koon arbitrary, falling within category II of the same principles.

2. By letter dated 27 July 1995, the Government of the Republic of Korea requested the Group to reconsider the above-mentioned decision.

3. At its fourteenth session, in December 1995, the Working Group adopted criteria in order to decide on the admissibility on such requests. These criteria, which are reflected in the revised methods of work of the Group, are the following:

> "Very exceptionally, the Group may, at the request of the Government concerned or the source, reconsider its decisions on the following conditions:
>
> (a) If the facts on which the request is based are considered by the Group to be entirely new and such as to have caused the Group to alter its decision had it been aware of them;
>
> (b) If the facts had not been known or had not been accessible to the party originating the request;
>
> (c) In a case where the request comes from a Government, on condition that the latter has replied within 90 days as stipulated in the Working Group's revised methods of work".

4. Since the request for reconsideration of decision No. 1/1995 was made prior to the adoption of the aforementioned criteria, the Working Group decided, in application of the principle of non-retroactivity, that these criteria would only be applied to requests made after their adoption. Consequently, the Working Group decided to consider the present request as admissible.

5. (a) After the Working Group had adopted decision No. 1/1995, the Government provided it with very detailed information concerning the conviction - after the decision had been adopted - of the persons referred to in the decision, as well as information concerning the freeing of two of those persons, which also took place after the adoption of the decision.

(b) Concerning the convicted persons who are still being held, the Government has provided the Group with information concerning procedure and explanations relating to the nature of the activities of which the persons in question are accused.

(c) As far as the first category of information is concerned, that relating to procedure, the Group considers that even if it had been available to the Group before the adoption of its decision, it would not have been such as to modify its decision relating to the arbitrary nature of the detention of the above-mentioned persons.

(d) As far as the second category of information is concerned, that relating to the explanations regarding the nature of the activities of the detained persons, the Working group considers that it constitutes no more than an interpretation of facts of which the Group was already aware and which it had examined on the basis of the criteria set out in its methods of work. Consequently, this information is also not such as to modify the Group's decision.

(e) As regards the information concerning the freeing of two of the persons concerned, the Working Group welcomes this step. However, it emphasizes that, while this information does indeed constitute a new fact, it would have enabled the Group to modify its decision only if they had been freed before the Group adopted its decision.

6. In the light of the above, the Working Group decides that it is not in a position to reconsider its decision.

Adopted on 23 May 1996.

REVISED DECISION No. 3/1996 (BHUTAN)

1. On 1 December 1994, the Working Group adopted decision No. 48/1994 (BHUTAN), deeming that the detention of Tek Nath Rizal following his conviction on 16 November 1993 could not be considered arbitrary.

2. In a request for a review dated 19 May 1995, the source asked the Group to reconsider that decision.

3. At its fourteenth session, in December 1995, the Group adopted criteria for determining the admissibility of such requests. Those criteria, which have been reflected in the Group's revised methods of work, are as follows:

> "Very exceptionally, the Group may, at the request of the Government concerned or the source, reconsider its decisions on the following conditions:
>
> (a) If the facts on which the request is based are considered by the Group to be entirely new and such as to have caused the Group to alter its decision had it been aware of them;
>
> (b) If the facts had not been known or had not been accessible to the party originating the request;
>
> (c) In a case where the request comes from a Government, on condition that the latter has replied within 90 days as stipulated in the Working Group's revised methods of work."

4. Considering that the request for a review of decision No. 48/1994 was made prior to the adoption of those criteria, the Group decided, on the basis of the principle of non-retroactivity, that the criteria should apply only to new cases, and accordingly declared the request admissible.

5. The Working Group recalls that, in its decision No. 48/1994, it rendered its opinion on the period of detention imposed on Tek Nath Rizal between the time he was sentenced by the High Court (16 November 1993) and the date on which the decision was adopted (1 December 1994).

6. With the source's agreement, the allegations supporting the request for a review were sent to the authorities in Bhutan for comment. The Government welcomed this adversary procedure, which gave it an opportunity to put forward its arguments to the Group on an informed basis.

7. In the light of the various arguments, the Working Group has made the following assessments:

**First allegation: Tek Nath Rizal was arrested in Nepal and improperly extradited to Bhutan (no extradition order).**

In its memorandum, the Government states that Tek Nath Rizal was handed over to the Bhutanese authorities on the basis of border agreements on police cooperation between Bhutan and neighbouring countries. During its visit to

southern Bhutan, the Group noted from interviews with detainees that some of them, apprehended in India, had indeed been handed over to the Bhutanese authorities and imprisoned on the basis of those agreements.

While not expressing a position on the nature of such agreements, the Group believes that if the allegations of irregularities proved to be true, the Nepalese authorities would be implicated.

The Working Group therefore decided not to accept the allegation in the form in which it was presented.

**Second allegation: the family of Tek Nath Rizal was not informed of his arrest within a reasonable period of time.**

According to the Government, within 20 days of Tek Nath Rizal's arrest, a Bhutanese public official was dispatched to Nepal, to Tek Nath Rizal's home, to inform his wife of her husband's arrest and of where he was being held. As Tek Nath Rizal's wife was out, the official informed the persons who were at home, namely, the father and two servants. When questioned about that, Tek Nath Rizal confirmed that that was what had happened.

The Working Group therefore considered that, given the distances involved, the delay was not so serious as to make the detention arbitrary. The allegation was therefore dismissed.

**Third allegation: the wife of Tek Nath Rizal was not given permission to visit him until the second year of his detention.**

The Government maintains that Mrs. Rizal did not ask to visit her husband until the second year of his imprisonment and that as soon as she sent a letter to the Minister for Foreign Affairs, on 5 July 1992, requesting such permission, he replied on 20 July 1992, as follows:

> "... The Royal Government of Bhutan is pleased to grant you permission to visit your husband, Mr. Tek Nath Rizal. Please let me know your date and time of arrival in Phuntsholing, so that the Dungpa may be instructed to issue your travel permit from Phuntsholing to Thimphu. Kindly contact me after your arrival in Thimphu so that I can make necessary arrangements for you to visit your husband. You may bring an escort with you, if you so wish."

In a letter dated 4 December 1992, Mrs. Rizal replied as follows:

> "I thank you very much for the letter dated 20 July 1992 which granted me an opportunity to see my husband, Tek Nath Rizal, who is in jail there. Although this kind gesture of yours gave me great pleasure for which I thank you, yet I wish to inform you that I need a little more time to take the journey. Since I am living here and my husband was taken away from me, I am in difficulty and am not in a financial position to take the trip immediately. I now hope to start it only after May 1993. When I am ready I shall write the date on which I shall reach Phuntsholing as your letter told me to do."

A copy of the above correspondence was handed to the Working Group.

According to some of the detainees the Group interviewed in Chamgang prison, where Tek Nath Rizal is being held, family visits, particularly by wives, are arranged by the Government on the initiative of the International Committee of the Red Cross (ICRC). It seems safe to assume that Mrs. Rizal did not ask to take advantage of this initiative. The Bhutanese authorities have reasserted that they would not turn down any request from Mrs. Rizal if one were made.

The Working Group therefore decided not to accept the allegation in the form in which it was presented.

**Fourth allegation: Tek Nath Rizal was not authorized to correspond with his wife, either officially or unofficially.**

The Working Group has been unable to reach an opinion on this matter. It notes that Tek Nath Rizal supposedly received correspondence from his wife, at least from time to time, although, in the face of conflicting allegations, the Group was unable to determine whether the occasional nature of that correspondence was due to the sender or to the administration's unwillingness. The same applies, in the other direction, to Tek Nath Rizal's supposed entitlement to send mail to his wife. Given that uncertainty, the Group decided not to accept the allegation in the form in which it was presented.

**Fifth allegation: Tek Nath Rizal was not informed of his right to be assisted by a lawyer, nor was a lawyer provided for him during his prolonged prison custody.**

The Government recalled that the function of a lawyer, stricto sensu, did not exist in Bhutan, as legal aid was traditionally provided by Jabmis, i.e. people who also exercised their own professions but who were allowed to perform that function more because of their wisdom and experience than because of any legal competence acquired "on the job".

The Government then stated that, in accordance with current practice, a Jabmi was not normally appointed unless the accused asked for one, which was not the case of Tek Nath Rizal; furthermore, when it had been proposed that a lawyer be appointed for him during the proceedings before the High Court, he had declined the offer, preferring to present his own defence. When questioned on that specific point, Tek Nath Rizal confirmed that version.

In the light of the above, the Working Group decided to dismiss the allegation.

**Sixth allegation: imprisoned in November 1989, according to the source, for acts committed in 1988/89, Tek Nath Rizal was charged under the National Security Act, which was not promulgated until October 1992.**

The Working Group considered that this allegation should be examined in the light of the principle of non-retroactivity of penal law, as laid down in article 11 of the Universal Declaration of Human Rights.

According to the chronology prepared by the Group on that matter, at the time of Tek Nath Rizal's imprisonment in November 1989, capital punishment was mandatory for offences under the National Security Act then in force. The Government - according to information with which it duly provided the source - maintains that in order to avoid the risks of such an occurrence, before Tek Nath Rizal was brought to trial, the decision was taken to amend the National Security Act, in accordance with the source's wishes, by repealing the provision laying down the death penalty. Because this resulted in a law that reduced the gravity of the offence, it became possible to prosecute on the basis of the new law, by virtue of the principle of the retroactivity of less severe penal legislation.

The Working Group consequently considered that there was no legal basis for the allegation.

**Seventh allegation: Tek Nath Rizal was handcuffed for two years. Moreover, he did not receive any medical care until one year after his imprisonment.**

In accordance with the Group's decision in pursuance of the recommendation made in Commission on Human Rights resolution 1996/28, which encouraged the Working Group to continue to avoid any unnecessary duplication of work, the Working Group transmitted the information to the competent Special Rapporteur.

**Eighth allegation: held incommunicado for two years, Tek Nath Rizal was detained for three years without being charged or tried.**

Regarding the first point, once again the Working Group was able only to take note of the contradictory versions it had received. While, according to the source, Tek Nath Rizal was held incommunicado, the Government maintains that this was not a case of solitary confinement but a specific situation, as Tek Nath Rizal had always asked to be kept in a cell without fellow prisoners. In any event, the Group believes that this matter has no decisive influence on its assessment of whether or not that period of detention was arbitrary, for the following reasons.

8. Indeed, the Working Group could not but note that between 17 November 1989, on which date he was imprisoned at Lhendupling Guest-House in Thimphu, and 29 November 1992, when his case was brought before the High Court, Tek Nath Rizal was imprisoned without being given an effective opportunity to be heard promptly by a judicial or other authority (principles 11.1 and 37 of the Body of Principles), and without being tried within a reasonable time (principle 38 of the Body of Principles). The Government explains the length of that period, as stated in the paragraph on the seventh allegation, by its concern that Tek Nath Rizal should not be tried until after the amendment to the National Security Act had been adopted, thereby abolishing the death penalty, which, given the executive procedure (Cabinet) and the legislative procedure (National Assembly), could not be promulgated until October 1992.

9. While welcoming the abolition of the death penalty, the Group recalls that, however praiseworthy the Government's intentions might have been in that regard, that in no way relieved it of the obligation to bring the case of

Tek Nath Rizal before a judicial or other authority as promptly as possible, as required by law, so that that authority could decide without delay on the lawfulness of and need for the detention.

10. The Working Group wishes to stress that, as it was able to note during its recent follow-up visit (May 1996), such shortcomings had been eliminated from the administration of justice.

11. In the light of the above, the Working Group decides:

(a) To declare the detention of Tek Nath Rizal for the period from 17 November 1989 to 29 December 1992 arbitrary, being in contravention of principles 11, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and falling within category III of the principles applicable in the consideration of the cases submitted to the Group.

(b) To state that the imprisonment of Tek Nath Rizal between his first appearance before the Court and his sentencing on 16 November 1993 cannot be deemed arbitrary.

(c) To confirm its decision No. 48/1994 of 1 December 1994 in which it declared the detention of Tek Nath Rizal since his sentencing by the High Court of Justice on 16 November 1993 not to be arbitrary.

Adopted on 24 May 1996.

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